HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

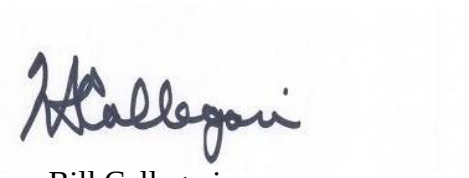
daily floor report

Tuesday, May 3, 2011
82nd Legislature, Number 67
The House convenes at 10 a.m.

Fifteen bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills and joint resolutions analyzed in today's *Daily Floor Report* are listed on the following page.

Six postponed bills and two postponed joint resolutions - HB 956 by Marquez, HB 255 by Hilderbran, HB 2334 by Hardcastle, HB 1250 by Frullo, HJR 122 by Legler, HJR 130 by Branch, HB 8 by Darby, and HB 1435 by Elkins - are on the supplemental calendar for second-reading consideration today. The analyses of these bills are available at the HRO website at: http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The House will consider a Local, Consent, and Resolutions Calendar today.



Bill Callegari
Chairman
82(R) – 67

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 3, 2011
82nd Legislature, Number 67

SUBJECT: Relating to state fiscal matters

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 25 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Dukes, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas

0 nays

2 absent — Martinez, Morrison

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the bill was reported favorably, as substituted, by the Senate Finance Committee on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13*, March 31, 2011.

DIGEST: **Article 1: State agency authorizations.** CSHB 3790 would authorize state agencies to reduce or recover expenditures by:

- consolidating required reports or publications and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;

- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- modifying eligibility requirements, processes, and services for people who receive benefits from the agency to ensure the benefits are received by the most deserving people, consistent with the purpose for the benefits;
- allowing agency communications with people and required agency documents delivered to or by the agency, including applications, notices, billing statements, receipts, and certificates, to be delivered by email or through the Internet; and
- adopting and collecting fees to cover agency costs.

Article 2: Premium tax credits. The bill would repeal provisions that currently allow insurers to credit against their premium taxes their payments related to regulatory examination and evaluation fees. This change would affect property and casualty insurers, health insurers and HMOs, title insurers, and other domestic insurers.

Article 3: TANF/SNAP application requirements. The bill would amend the Human Resources Code to direct HHSC to use appropriate technology to confirm the identity of applicants for Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Program and prevent duplicate participation in the program. It also would repeal the requirement to electronically fingerprint applicants of these programs.

Article 4: Tax records. The bill would amend record requirements for all entities from which the comptroller collects taxes to require that records must be kept at least four years or during the period when any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or during the period an administrative hearing or a judicial proceeding was pending to determine the amount of tax, penalty, or interest that was to be assessed, collected or refunded. It also would require taxpayers to produce contemporaneous records and supporting documentation appropriate to enable verification of the amount of tax, penalty, interest or fee that may be owed or refunded for the period in question. It would define contemporaneous records and supporting documentation to include invoices, vouchers, checks, shipping records, contracts, and other written documentation reflecting legal relationships and taxes. Summary records without supporting contemporaneous records would not be sufficient to substantiate the claim. It also would add that taxpayers contesting a state

tax or seeking a refund would have to produce contemporaneous records and supporting documentation to substantiate their claims.

Article 5: Collection Improvement Program audits. CSHB 3790 would amend the Code of Criminal Procedure to remove the comptroller's involvement in the auditing of cities and counties participating in the Collection Improvement Program at the Office of Court Administration, and instead assign the duties to the Office of the Court Administration.

Article 6: Penalties for failing to file tax reports. The bill would repeal current law authorizing the comptroller to impose a $50 penalty on entities that fail to file a required sales, excise or use tax report three or more times and would instead authorize the comptroller to impose a $50 penalty for *each* failure to report or remit taxes, without regard to whether the entity subsequently filed the report or whether any taxes were due. This new penalty would apply to entities subject to the beer wholesaler/distributor tax, motor vehicles tax, seller-financed motor vehicle tax, hotel occupancy tax, motor fuels tax, franchise tax, mixed beverage tax, and emergency 9-1-1 service fee collection.

Additionally, entities subject to the mixed beverage tax collections and emergency 9-1-1 fee collection who failed to file a report or remit taxes would have to pay 5 percent of the amount due as a penalty, and if the penalty was not paid within 30 days after the fee or report was due, an additional 5 percent.

Article 7: Foundation School Program payments. The bill would amend the Education Code to defer the Foundation School Program August payments to September. The payment deferments would take effect in fiscal 2012 (deferring August 2013 payments to September 2013). This section also would repeal a provision in the Government Code that requires the comptroller each August to estimate the amount to be transferred to the Foundation School Fund and transfer the estimated amount on or before September 15.

Article 8: Unclaimed property. The bill would amend the Property Code to move up the dates regarding unclaimed property starting in 2013, by requiring property holders of abandoned intangible (financial) property on June 1 of every year to report to the comptroller by July 1 instead of November 1 of each year, and for property valued at $250 or more, to

notify the last known owner by May 1 instead of August 1 that the holder may deliver the property to the comptroller.

Article 9: Voter registration. The bill would amend the Election Code to consolidate the administration of financing the voter registration program at the Secretary of State's Office and remove the involvement of the comptroller in issues regarding noncompliant registrars, registration updates, and payments to registrars.

Article 10: Comptroller powers and duties. In matters related to the comptroller's authority to deduct for employee indebtedness, this article would change the definition of compensation to instead use the definition used in recovering excess compensation (eliminating references to payments for accrued vacation and sick time). For the execution of simplified depository agreement with institutions, the article would eliminate criteria of institutions agreeing to hold state deposits of $98,000 or less. The article also would authorize the comptroller to obtain criminal history records for the enforcement of the motor fuels tax in addition to other taxes administered by the agency.

Article 11: Preparation/publication of reports. The bill would require the Higher Education Coordinating Board, instead of the comptroller, to prepare and deliver required reports concerning student enrollment, tuition and other issues. The comptroller would be required to electronically publish all materials related to the appraisal of property and administration of taxes and explanation of taxpayer remedies and no longer would be required to provide hard copies free of charge. The comptroller would be required to electronically report biennially, instead of annually, specified property tax value information. The article also would repeal required reports by the comptroller regarding court cost fee changes implemented by the Legislature and the progress of the state's economic development. The article also would repeal a duty by municipal corporations created for skilled workforce development to report annual objectives, revenues, expenditures, and assets to the comptroller.

Article 12: Sales and use tax holidays. The bill would halt the sales tax holidays in state fiscal years in which the comptroller determined a general revenue-related deficit existed in the current fiscal biennium and general revenue-related funds for the subsequent biennium were less than the general revenue-related funds in the current biennium. The comptroller would have to make the determination in January of odd-numbered years

and provide notice that the exemptions would not apply by February 15. Sales tax exemptions would not take place in fiscal 2012, and if the bill received enough votes to take immediate effect, in fiscal 2011.

Article 13: Surplus lines and independently procured insurance. The bill would expand the definition of what constituted a premium subject to premium taxes. It would specify that premium taxes would not be imposed on nonadmitted insurance premiums consistent with the federal Nonadmitted and Reinsurance Reform Act of 2010. It would authorize the comptroller to establish by rule an alternate basis for taxation for the purpose of achieving uniformity and make adjustments for taxes on multistate policies in which Texas was in a cooperative agreement or compact with another state on the allocation of the tax.

Article 14: Obesity intervention and prevention. The bill would require the comptroller to establish an obesity intervention and prevention grant program and study, which would award grants to public school programs and other entities that provide nutrition education and intervention, prevention, and other programs to combat obesity. The comptroller would be required to identify geographic areas where students were at high risk for obesity and give preference to those areas in awarding grants. The bill would specify the compilation of data used to identify risk and the creation of an interactive map that showed the results. Applicants would have to use matching funds, and the grants would be awarded on a competitive basis. Grant awardees would be required to collect and report data regarding the program's effectiveness. The comptroller would be required to establish an obesity and wellness information web portal to educate the public and to report to the Legislature in January of odd-numbered years the effectiveness of the grant program.

Effective dates. The act would take effect on September 1, 2011 unless otherwise provided. For Articles 2, 3,4, 6, 12, and 13, the provisions would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. Articles 5, 7, 8, and 9 specify an effective date of September 1, 2011.

SUPPORTERS SAY:

CSHB 3790 is needed to make statutory changes in agency operations that would help generate $17 million in general revenue for fiscal 2011, and a net gain to general revenue-related funds of $2.5 billion through fiscal 2013. Many of its provisions were derived from recommendations by

state agencies and from the LBB's January 2011 Government Efficiency and Effectiveness Report (GEER).

Premium tax credits. This bill would close a loophole that in effect pays with general revenue what private insurer examination fees are intended to pay. Insurance carriers now are required to pay a fee to cover the Texas Department of Insurance's (TDI's) examination of the carriers' regulatory compliance. Insurers receive credit against their premium tax payments for their payment of examination fees, which in effect means that general revenue ends up paying for the examination costs. These provisions also would incentivize insurers to maintain full compliance with state laws and regulations, since the size of their examination fees are related to the size of the problems found in conducting the examinations. This bill would implement an LBB recommendation found in the Government Effectiveness and Efficiency report, but would authorize insurers to still credit their assessments against their owed premium taxes.
The fiscal implications of these amendments have been assumed under CSHB 1, and the fiscal note assumes that the fee credits earned prior to the effective date of the bill would be applicable to premium tax liabilities in fiscal 2012.

Repealing SNAP/TANF finger-imaging requirements. Finger-imaging applicants is an unnecessary expense to the state, and this provision would save about $3.1 million in general revenue in fiscal 2012-13. Several state and national studies have concluded that finger imaging is not cost-effective and may deter legitimate participation. The bill still would require HHSC to use appropriate technology to confirm applicant identity and prevent duplicate participation, and better technology is available today than 15 years ago when Texas first implemented finger imaging. For example, now with the statewide operations of the TIERS eligibility system and the use of an electronic benefit card, it is harder to commit fraud and easier to use alternative means of identifying duplicative participation and verifying identities. Savings would result from reducing staff time on processing eligibility, staff training and overhead, technology-related costs, and ending the contract with Lone Star Imaging Services. Among other studies is a 2008 report by the Urban Institute that showed the use of biometric technology can lead to as much as a 4.3 percentage point decline in food stamp receipt because it reduces the likelihood that food stamp applicants will complete the application process. The fiscal implications of these amendments have been assumed under CSHB 1.

Tax Records. CSHB 3790 would conform the record-keeping requirements for all business taxpayers, thus treating all entities equitably, including those who are contesting a tax or seeking a refund. These provisions would increase state revenues by streamlining state administration of cases involving contesting a state tax or requesting a refund by putting in place recordkeeping requirements that would allow for an easy verification of the claim, and by reducing the number of unsubstantiated refund claims filed with the comptroller. The record-keeping requirements will also allow the comptroller auditors to use their time more effectively and more quickly process cases.

Collection Improvement Program audits. These changes would streamline program administration and would appropriately put auditing responsibilities in the Office of Court Administration, which runs the program. The provision also would allow the comptroller to focus staff time on tax auditing and collections, and therefore is expected to increase state revenues by about $5 million per year.

Penalties for failing to file tax reports. These provisions would make penalties associated with late filing consistent across taxable entities and incentivize on-time payments, which would help state revenues. The bill would maintain the comptroller's discretion to waive the application of penalties, if needed.

Foundation School Program. Deferring the Foundation School Program payment would provide significant relief to the state in fiscal 2012 while still providing the same level of support to local school districts. This would be a simple change that would minimally impact school districts but would substantially affect the budget, and it is expected to save $1.8 billion in fiscal 2013. The payment delay would be for only a couple of weeks, and school districts would have enough lead time to appropriately budget their spending. Additionally, keeping the deferral permanent would prevent worse problems next biennium if the state had to resume the August payment. As in the past, when state finances improve, the Legislature could consider restoring the previous payment schedule.

Unclaimed property. This bill would reduce the dormancy period for unclaimed financial instruments, such as bank accounts and utility deposits, thereby more quickly increasing the transfer of abandoned property to the state or to the rightful owners. Shorter dormancy periods also make it easier for the holders of unclaimed property to find the

property owner because they are more likely to be in the same area using the same name.

Voter registration. This provision would streamline the administration the state's grant program to help counties meet expenses associated with elections by placing the entire responsibility of the program in the Secretary of State's Office, and removing comptroller involvement. The program has been in place since the mid-1960s and uses formula funding based on voter registration growth and cancellations to help counties pay for such activities as hiring temporary workers or upgrading equipment. While the SOS administers the program and tallies registration records, they must inform the comptroller of the registration figures so the comptroller can pay the grantees. This provision would change nothing about the program other than allowing the SOS to make grantee payments.

Sales tax holidays. This recommendation would tie August sales tax holidays to state budget conditions, as recommended by LBB's Government Effectiveness and Efficiency Report, by suspending the tax holidays and establishing a permanent review process. Other states have cancelled or eliminated their tax holidays due to budgetary shortfalls, and Texas should too. Taxpayers understand what it is to tighten one's belt, and they would understand that tax holidays would continue when the state could afford them.

Benefits of tax holidays to consumers and retailers have not been conclusive. Some studies show that the holidays are too insignificant to make a difference in family expenditures, and that the volume of goods purchased during the holiday would most likely have been purchased over a longer period of time. Immediate implementation of this provision would result in a general revenue gain of $17 million in fiscal 2011, $57.4 million in fiscal 2012, and $41.4 million in fiscal 2013. An effective date of September 1, 2011, if the bill did not take immediate effect, would mean that the tax holiday would remain in 2011, thereby resulting in a lower general revenue gain of $17 million for fiscal 2012 and $42.4 million in fiscal 2013.

Obesity Prevention Program. The Obesity Intervention and Prevention program would help identify best practices in reducing the incidence of childhood obesity, especially in areas where there was a higher risk of obesity. Currently, many programs exist to help families and communities

address obesity. This program would use information technology system and data from multiple sources to identify high-risk areas in Texas, and then offer grants to help study the impact of an anti-obesity program. This grant program will foster local control and creativity while targeting high-risk areas. Obesity is a serious health problem because it deteriorates or complicates children's health and quality of life. The program would not cost the state and has been assumed in CSHB 1 projections within the comptroller's budget.

OPPONENTS SAY:

Many of these provisions are one-time budget maneuvers that would help capture or retain state revenues for the next fiscal year, but do nothing to remedy our structural tax problems that perpetually create deficiencies. Some provisions would in effect increase taxes, for example, by eliminating tax breaks or holidays.

State agency authorizations. Sec. 1.02(4) is too broadly worded and would give state agencies authority to change program eligibility, services, and benefits without legislative direction or oversight.

Premium tax credit. By removing insurers' ability to credit against their premium taxes the fees the state charges for examining them, this bill would in essence increase taxes on insurers, which could ultimately increase consumer rates. Additionally, if the Legislature enacted provisions in SB 1291 by Hegar that would authorize the Texas Department of Insurance to spend fees without budget appropriation, the department could be incentivized to increase fee revenues at the expense of insurers.

Repealing SNAP/TANF finger-imaging requirements. Verifying a person's identity to determine eligibility for state health and human service benefits directly increases in importance with increases in caseloads. Finger-imaging should be kept in place to ensure benefits are delivered only to those in need and who are truly entitled to them, and other ways should be found to minimize the cost of this program.

Collection Improvement Program audits. This program unfairly requires large cities and counties to adopt specified court fee collection processes and procedures and does not sufficiently allow local control. Instead of amending just the comptroller's role in the program, this bill should also authorize counties to implement their own compliant programs

as reflected in provisions now under Senate consideration in SB 1059 by Nichols.

Foundation School Program payments. School districts count on this funding and need the funding as soon as they can get it. In these tight budgetary times, waiting a couple of extra weeks to receive FSP funding would put some school districts in a bind. Many districts do not expect to have sufficient savings to finance the remainder of 2012 while they wait for the state's payment. Additionally, this would be a "sleight of hand" maneuver that does nothing to resolve the structural and other tax and spending problems that are creating the state's shortfall and budget challenges. This deferral would create an even bigger budget hole in the future when the state resumes its normal August payment period.

Sales tax holidays. An economic downturn is the worst time to suspend a tax holiday because that is when families most need the financial break and retailers could use the added boost from sales. Retailers say store revenues can increase as much as 10 percent during a tax holiday, and families get added benefits when stores offer additional sales. Since sales taxes typically are regressive — that is, lower-income individuals and families pay disproportionately more of their income on sales tax than wealthier individuals and families — offering a sales tax holiday is one of the best ways to give a break to families that are hurting the most. Sales tax holidays do not lose money for the state. August tax collections do not drop in comparison to other months of the year, and both retailers and the states benefit from increased sales revenues. According to February 2011 conclusions by the Washington Economics Group on Florida's tax holiday, "Contrary to conventional wisdom, a tax holiday resulted in higher tax collections…while consumers may time-shift purchases of some items to take advantage of the sales tax holiday, they do not shift their overall level of spending."

Obesity Prevention Program. This is a "nanny state" program that would attempt to do for families what they should do for themselves. Obesity is a problem that is well-recognized and can be controlled by appropriate nutrition and exercise in most cases, activities that any parent knows how to handle.

NOTES:

SB 1811 by Duncan, a similar bill concerning state fiscal matters, passed the Senate by 22-9 (Birdwell, Carona, Fraser, Huffman, Jackson, Nelson, Patrick, Shapiro, Williams) on April 29 and was reported favorably, as

substituted, by the House Appropriations Committee on May 2, with the committee substitute containing the same provisions as CSHB 3790.

Rep. Pitts plans to offer a floor amendment to remove the provisions in Article 1 related to agency authorizations to reduce or recover expenditures.

HB 3639 by Pitts, which also contains a provision to shift the Foundation School Program payment, is on today's General State Calendar.

HB 2949 by Cook, which also contains provisions relating to the Collection Improvement Program, is on today's General State Calendar.

SUBJECT: One-time prepayment in fiscal 2013 of certain taxes due in fiscal 2014

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 24 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas

0 nays

3 absent — Dukes, Martinez, Morrison

WITNESSES: None

DIGEST: CSHB 3640 would require one-time prepayments of certain franchise, motor fuels, alcohol, and sales taxes.

Franchise tax. The bill would require certain businesses that grossed more than $2 million a year to make a prepayment on their franchise taxes that were due on May 15, 2014. The prepayment would be equal to 25 percent of the franchise tax payment due by the company on May 15, 2012. The prepayment would be due no later than July 31, 2013, and would be counted as a credit on franchise taxes due on May 15, 2014. A large taxable entity that failed to remit the tax prepayment would be issued a 10-percent penalty on the prepayment.

The bill would require the comptroller to deposit the prepayments into the General Revenue Fund, instead of placing a portion of the funds into the Property Tax Relief Fund, as required by current statute.

The bill would define a "large taxable entity" as one that was required by the comptroller to file its franchise taxes electronically. This would be a business that grossed more than $2 million a year.

Motor fuels taxes. CSHB 3640 would require each licensed distributor and licensed importer of gasoline or diesel to make a prepayment on its motor fuels taxes due in September 2013. The prepayment would be 25 percent of the motor fuels taxes accrued during July 2013 and would be

due on August 30, 2013. The prepayment would be counted as a credit on motor fuels taxes due that were due in September 2013.

The bill would prevent the comptroller from allocating the funds collected under the prepayment provisions to Fund 6 and the Available School Fund. Instead they would be diverted to general revenue. Those funds would be made whole in fiscal 2014.

Alcohol taxes. The bill would require that each permittee who was liable to pay alcoholic beverage taxes on liquor, ale and malt liquor, or beer to make a prepayment on its alcoholic beverage taxes due in September 2013. The bill also would require permittees authorized to sell alcoholic beverages on planes and trains to make a prepayment. The prepayment would be 25 percent of the amount of taxes due during August 2013 and would be counted as a credit on alcoholic beverage taxes due in September 2013.

Sales tax. The bill would require a taxpayer who owes sales taxes to make a prepayment on his or her sales taxes due in September 2013. The prepayment would be 25 percent of the amount of taxes due in August 2013 and would be counted as a credit on sales taxes due in September 2013.

Effective date. The bill would take effect on September 1, 2011.

SUPPORTERS SAY:

CSHB 3640 would raise $1.4 billion in revenue for fiscal 2012-13 by requiring a one-time prepayment of taxes due in fiscal 2014.

The bill would allow a one-time acceleration of tax payments to boost general revenue during the upcoming fiscal biennium that would help pay for essential programs like education and health care. Businesses would make a prepayment, but they would receive a credit on that payment in the next tax period. While the prepayments would not be painless for businesses to make, they are the lesser evil when compared to further cuts in essential state programs. Legislators should use every tool available to fund spending priorities essential to the state. Texas businesses realize that certain investments must be made in public services in order to keep the economy healthy and demand strong for their goods and services.

Prepayment of these taxes would not overly burden Texas businesses, which generally keep taxes collected for a period of time before remitting

them to the state. For instance, motor fuels taxes collected on gasoline sales in January are not remitted to the state until late February. Under the bill, prepayments of taxes simply would require remitting some of the taxes during the month they came in rather than holding them for a month before remitting them.

Businesses that folded between the time they made their prepayment and when they would have claimed the tax credit would have their credit applied to their final tax payments.

OPPONENTS SAY:

CSHB 3640 would be hard on Texas businesses during a rough economy. Businesses collect sales, motor fuels, and mixed-beverage taxes on behalf of the state from their customers when they make a sale. Certain small businesses are able to balance their books only by floating the collected taxes before remitting them to the state. If the state collects early, it denies businesses the ability to use those funds as part of their cash flow. While these smaller businesses should not treat state taxes this way, the reality is that many do, and it is an important part of their cash flow.

The franchise tax prepayment requirement would be onerous for many businesses. The franchise tax, unlike the sales, motor fuels, and mixed-beverage taxes, does not come directly from the consumer. Instead it comes from a business's bottom line. Further, the other tax prepayments would be based on a quarter of a month's worth of taxes, while the franchise tax prepayment would be based on a quarter of a year's worth of tax.

OTHER OPPONENTS SAY:

The bill only should require those businesses that grossed at least $10 million a year to pay the franchise tax speed-up. It is better to exempt smaller companies who are not as capable of making these payments as larger companies are.

NOTES:

According to the fiscal note, the bill would increase general revenue by $1.4 billion in fiscal 2013 and lower it by the same amount in fiscal 2014. The fiscal note shows that losses to the Available School Fund and Fund 6 that would be incurred in fiscal 2013 would be made up in fiscal 2014.

The companion bill, SB 1587 by Ogden, was referred to the Senate Finance Committee on March 23.

SUBJECT: Requiring denial of bail for second violent, sexual offense

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Gallego, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler

0 nays

1 absent — Hartnett

WITNESSES: For — Kimberly Segale; (*Registering, but did not testify:* Katrina Daniels, Bexar County District Attorney Susan Reed)

Against — None

BACKGROUND: A person accused of a crime generally is guaranteed the right to post bail to secure release from jail pending trial. Tex. Const., Art. 1, sec. 11 states that all prisoners shall be eligible for bail unless accused of a capital offense when proof is evident. However, Tex. Const., Art. 1, sec. 11(a) allows courts to deny bail under certain circumstances. Under this provision, a judge has the discretion to deny bail if the defendant is accused of:

- a felony and has been convicted of two prior felonies;
- a felony committed while on bail for a prior felony for which the defendant has been indicted;
- a felony involving the use of a deadly weapon after being convicted of a prior felony; or
- a violent or sexual offense committed while on probation or parole for a prior felony.

Violent offenses are defined as murder, aggravated assault if a deadly weapon was used or exhibited, aggravated kidnapping, and aggravated robbery. Sexual offenses are defined as aggravated sexual assault, sexual assault, and indecency with a child.

Bail may be denied in these circumstances only after a hearing and upon presentation of evidence substantially showing the guilt of the accused.

Under Tex. Const. Art. 1, sec. 13, excessive bail cannot be required.

Under secs. 11(b) and 11(c), bail also may be denied following a hearing in two other situations. Judges can deny bail to persons who were accused of a felony or any offense involving family violence, had been released on bail on those charges, and whose bond had been revoked or forfeited for violating a condition of that bond related to the safety of the victim or the community. Also, bail can be denied if a judge determines at a hearing that the person violated certain protective orders in family violence cases.

Under Code of Criminal Procedure, art. 17.15, when setting bail a judge considers the nature of the offense and the circumstances under which it was committed, the safety of the victim and the community, and the defendant's ability to make bail. To secure a defendant's attendance at trial, a court may impose any reasonable condition on a bond related to the safety of an alleged victim or the safety of the community. A court may revoke a defendant's bond only if at a hearing it finds by a preponderance of the evidence that the defendant has violated a condition of the bond.

DIGEST:

HJR 98 would require judges, following a hearing, to deny release on bail to persons taken into custody for a violent or sexual offense who have previously been convicted of a violent or sexual offense.

Violent offense would be defined as murder, aggravated assault if a deadly weapon was used or exhibited, aggravated kidnapping, and aggravated robbery. Sexual offenses would be defined as aggravated sexual assault, sexual assault, and indecency with a child.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: "The constitutional amendment denying bail to certain persons charged with a violent or sexual offense after having been previously convicted of a violent or sexual offense."

SUPPORTERS SAY:

HJR 98 would require judges to deny bail in narrowly tailored, justifiable circumstances involving persons accused of a second violent or sexual offense. The proposed constitutional amendment would address shortfalls in current law by requiring judges, in these appropriate cases, to keep defendants off the streets by denying bail. The public deserves to be protected from these defendants while they are awaiting trial because of

the seriousness of their alleged crimes and the fact that they have a previous violent or sexual offense.

The current criteria allowing the denial of bail are too broad to adequately protect the public from the accused potentially repeat offenders described by HJR 98. To deny bail to a person accused of a violent or sexual offense, a defendant must have had two prior felonies or meet other criteria that do not necessarily fit those described by the amendment. HJR 98 would limit the bail denial to the seven most serious violent and sex offenses: murder, aggravated assault if a deadly weapon was used or exhibited, aggravated kidnapping, aggravated robbery, aggravated sexual assault, sexual assault, and indecency with a child

The authority proposed in HJR 98 could have been used in a Garland case in which a man with a previous sex offense was accused of murder and had his bail reduced from $1 million to $100,000. In this case, denial of bail would have been appropriate.

These defendants have proven that they are dangerous because of their first violent or sexual offense, and they should not be released under bond conditions when accused of another violent or sexual crime. They may have a propensity to offend, which raises public safety concerns, and they would be more likely to flee as they would be facing substantial prison time for their second violent or sexual offense.

The Texas Constitution long has recognized that there are exceptions to the requirement that bail generally should be made available to criminal defendants. The situations in which bail can be denied have evolved, and it is appropriate for Texas to set limits on bail just as the federal government and many states do. It is appropriate to revise state policy to reflect concerns about violent and sexual offenders and to address shortfalls in current law that do not adequately protect the public.

The serious nature of the violent and sexual offenses listed in HJR 98 requires that bail denial in these situations be mandatory, not discretionary. HJR 98 would be in line with current constitutional provisions and statutes that treat violent and sexual crimes uniquely in the setting of bonds. For example, the Code of Criminal Procedure requires judges and magistrates to notify prosecutors before reducing the amount of bail set for certain serious and sex offenses.

Existing tools do not always work to safeguard the public from repeat violent or sexual offenders. While judges might set high bail in these cases, defendants can have their bail amount reduced or obtain release through writs of habeas corpus. Setting tighter conditions on bonds could be ineffective in these cases. By setting a uniform standard for bail in these cases, HJR 98 would address a problem that can occur when a defendant is transferred to a different jurisdiction and bail amounts are reduced.

Defendants described by the proposed amendment – like those denied bail currently under the Texas Constitution – would retain all their rights to due process and other protections. For example, the determination to deny bail would have to be made at a hearing in which the defendant could appeal the denial of bond or make a case for another bond

HJR 98 should have limited impact on jail populations. The fiscal note says that the cost to local governments for HJR 98 would not be significant. The offenders described by the amendment should be considered high priority for housing in Texas jails.

OPPONENTS SAY:

HJR 98 would erode the basic tenet that bail should not be denied to criminal defendants except in the most limited circumstances. The purpose of requiring bail is to ensure a defendant's appearance at a subsequent hearing or trial, not to punish someone for an alleged offense or to deter hypothetical, future crimes.

Requiring judges to deny bail in the circumstances described by the proposed amendment could violate the longstanding legal principle that bail should not be used as an instrument of oppression and could lead to a further expansion of the circumstances or crimes in which bail could be denied. The problem that this proposed amendment seeks to solve is a limited one that does not justify amending the Bill of Rights article of the Texas Constitution. The proposed amendment could result in the unfair detainment of persons who were innocent or not dangerous.

By requiring judges to deny bail in certain circumstances, HJR 98 would infringe on judges' discretion to make appropriate decisions about bail. Forcing judges to abdicate their responsibilities to evaluate individual cases could result in the loss of due process rights for defendants.

Current law works to protect the public in the types of cases described by HJR 98, and bonds are set appropriately in these cases. For example, courts already are required to consider public safety and the nature of an alleged offense and set higher bail accordingly. Defendants – especially those with a previous violent or sexual offense – who are charged with serious violent or sexual crimes often remain in custody because they cannot make bail. Prosecutors can ask for bail to be increased. Judges can set restrictive conditions on bonds for persons described by HJR 98 and can use supervision strategies such as electronic monitoring to protect the community. Some Texas jails already are overcrowded, and this problem could increase with HJR 98.

OTHER OPPONENTS SAY:

It would be better for HJR 98 to allow – but not require – judges to deny bail to persons accused of a repeat violent or sex offense. This would give judges another tool to use if deemed necessary. If HJR 98 were discretionary, judges could evaluate the threat a defendant presented to the community and deny bail in appropriate cases.

SUBJECT: State fiscal matters related to general government

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 25 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Dukes, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas

0 nays

2 absent — Martinez, Morrison

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the bill was reported favorably, as substituted, by the Senate Finance Committee on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13, March 31, 2011.

DIGEST: CSHB 3665 would amend portions of the Government Code and other statutes as required to implement provisions for general government agencies in the general appropriations act for fiscal 2012-13.

Article 1. Agency authorizations. CSHB 3665 would authorize state agencies that receive appropriations under Article 1, general government, of the general appropriations act to reduce or recover expenditures by:

- consolidating required reports or publications and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;
- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who receive benefits from the agency to ensure the benefits are received by the most deserving people, consistent with the purpose for the benefits;
- making agency communications with people and required agency documents delivered to or by the agency, including applications, notices, billing statements, receipts, and certificates, by email or through the Internet; and
- adopting and collecting fees to cover agency costs.

Article 2. Lease of state-owned parking spaces. CSHB 3665 would allow the Texas Facilities Commission (TFC) to lease state-owned parking spaces in Austin to private individuals if TFC determined the spaces were not needed for nearby state employees or state government visitors. The money earned through the leases would go to the General Revenue Fund.

TFC also would be allowed to lease blocks of state-owned parking lots or garages to local governments or higher education institutions if TFC determined that the block of parking would not be needed for nearby state employees and state government visitors. The money earned through the leases would go to general revenue.

CSHB 3665 would require TFC to report the effectiveness of these parking programs to the Legislative Budget Board (LBB) on October 1 of every even-numbered year. The report would have to include:

- the yearly revenue generated;
- the yearly administrative and enforcement costs;
- yearly usage statistics for each program; and
- any initiatives and suggestions by TFC to modify the lease program administration or increase revenue generated.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

Article 3. Calculation of state debt limit. For the purpose of comparing the calculation to the maximum annual debt service allowed, CSHB 3665 would authorize the Bond Review Board (BRB) to calculate yearly debt service requirements using any assumptions for unissued debt that the BRB determined were necessary to reflect common or standard debt issuance practices, including assumptions about interest rates, debt maturity, and debt service payment structures. Unissued debt would be defined as state debt payable from the General Revenue Fund that was authorized but not issued.

CSHB 3665 would require the BRB to publish a report every year starting in fiscal year 2011 detailing the method used to calculate the annual debt service in that fiscal year, which would be required to describe:

- the debt service included in the calculation, including debt service on issued and unissued debt;
- the assumptions on which the debt service on unissued debt was based; and
- any other factors required by law that affected the calculation.

The report could be included as part of any other report required by law, including the annual report, and the report would have to be made available to the public.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

Article 4. Electronic pay cards. CSHB 3665 would require the comptroller to establish an efficient and effective system of making payments by electronic pay card. The comptroller would be authorized to use an electronic pay card to pay an employee's net state salary and travel expense reimbursements. An employee, regardless of classification or amount paid, would be required to receive payment by direct deposit or electronic pay card. The comptroller would have to make payments to all annuitants from the Employees Retirement System, the Teacher Retirement System, or any state treasury-paid retirement system by direct deposit or electronic pay card, including for amounts less than $100. Vendors could choose to be paid with an electronic pay card rather than by check.

Current law would be repealed that requires the comptroller to issue checks instead of using direct deposit under certain circumstances. The comptroller would be required to adopt rules for allowing state payment recipients to choose at appropriate times among the options of receiving payments by direct deposit, electronic pay card, or check.

CSHB 3665 would allow the comptroller, only by competitive bid, to contract with a vendor or vendors for electronic pay card services. The bill would require that the comptroller specify the qualifications for bidders, including that the vendor was federally insured or possessed sufficient financial resources to ensure protection of those paid and would be able to provide 24-hour customer service so that those paid could access their funds worldwide at any time.

This article would take effect January 1, 2012.

Article 5. Publish session laws electronically. CSHB 3665 would repeal the requirement for the laws passed each session to be printed and distributed to the governor, lieutenant governor, speaker, Texas Legislative Council, courts of appeals, county law libraries, Legislative Reference Library, State Law Library, and Texas State Library.

As soon as practicable after each legislative session, the secretary of state would have to electronically publish and maintain the session laws. The electronic publication would have to be available by an electronic link on the secretary of state's website.

The change in law would not apply to a contract for publication of session laws already in effect before the effective date of the bill.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

Article 6. Collection of fees by attorney general. CSHB 3665 would allow the attorney general to charge a reasonable fee for the electronic filing of a document.

The bill would require the attorney general to review invoices submitted to state agencies under contracts for legal services to determine whether the invoices were eligible for payment. When entering into a contract for legal

services, the attorney or law firm would be required to pay an administrative fee to the attorney general for the invoice review. CSHB 3665 would allow the attorney general to adopt rules to implement this provision.

CSHB 3665 would allow the attorney general to charge toll project entities a reasonable fee for the attorney general's review of each proposed comprehensive development agreement, including separate fees for agreements for the same toll project. The toll project entity would be authorized to seek reimbursement of the fee from the private participant under the proposed comprehensive development agreement. CSHB 3665 would allow the attorney general to adopt rules to implement this provision.

The fees established by this article would apply only to electronic documents, invoices, or comprehensive development agreements submitted on or after the effective date of this article.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

Article 7. Texas Preservation Trust Fund Account. CSHB 3665 would allow money in the Texas preservation trust fund account to be used to pay operating expenses of the Texas Historical Commission in addition to the preservation grants already allowed by law. The bill would repeal provisions related to investment and distribution of funds by the comptroller. The bill would require the comptroller and the Texas Historical Commission to enter into a memorandum of understanding to facilitate the conversion of trust fund assets into cash in a way that resulted in the least revenue loss to the state.

This article would take effect November 1, 2011.

Article 8. Department of Information Resources programs. CSHB 3665 would allow revenue from fees collected under current law for statewide technology center services and for technology commodity item purchasing to be appropriated to the Department of Information Resources (DIR) for the following:

- developing statewide information resources technology policies and planning for statewide technology centers and Texas computer network security systems; and
- providing shared information resources technology services.

For consolidated telecommunications system charges collected by DIR under current law, the bill would require DIR to set and charge a sufficient fee to each entity that received services to cover direct and indirect costs of providing the telecommunications service. CSHB 3665 would allow revenue from these fees to be appropriated to DIR for the purposes bulleted immediately above.

Fee amounts in excess of paying the bills of the consolidated telecommunications system and the centralized capitol complex telephone system would be transferred to the General Revenue Fund rather than the statewide network applications account as under current law. The bill would allow these general revenue funds to be appropriated to DIR for the purposes bulleted above.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

Article 9. Lobby registration fees. CSHB 3665 would change the lobbyist registration fee and registration renewal fee from $100 to an amount set by the general appropriations act of between $100 and $200 for registrants employed by a 501(c)(3) or (c)(4) charitable organization. CSHB 3665 would change the lobbyist registration fee and registration renewal fee from $50 to an amount set by the general appropriations act of between $50 and $100 for registrants required to register because they were independent contractors whose contingent compensation depended on state agency purchasing decisions. The bill also would change the lobbyist registration fee and registration renewal fee from $500 to an amount set by the general appropriations act of between $500 and $1,000 for any other registrants.

Except as otherwise provided, this bill would take effect September 1, 2011.

SUPPORTERS SAY:

The changes made in CSHB 3665 would result in an estimated net positive fiscal note impact of $9,687,570 in general revenue funds for fiscal 2012-2013. Many of its provisions were derived from recommendations by state agencies and from the LBB's January 2011 *Government Efficiency and Effectiveness Report (GEER).*

Article 1. Agency authorizations. These authorizations would give agencies flexibility and control in reducing or recovering expenditures in ways other than those specifically identified in this bill. They have in-depth knowledge of their programs and operations and could find ways to meet program needs while maximizing the use of appropriated funds.

Article 2. Lease of state-owned parking spaces. CSHB 3665 would result in an estimated fiscal note gain in general revenue of $887,471 every year by allowing the TFC to lease state parking spaces in Austin to private individuals and to local governments and universities. The *GEER* noted that on average daily basis, most state parking spaces are unused. TFC has successfully operated a parking program that allows private individuals to use Austin state garages and parking lots on nights and weekends for a fee, and would only need one more employee to manage this daytime parking lease program that would have a significant positive fiscal impact.

Article 3. Calculation of state debt limit. CSHB 3665 would allow the Bond Review Board to update its method for calculating unissued debt projections to more accurately reflect the risks of outstanding debt by reflecting actual issuing practice. This would help protect the state's credit rating and could enable the state to issue more debt based on updated projections.

The BRB calculates the yearly debt service requirements payable from unrestricted general revenue funds to determine whether additional state debt can be authorized without exceeding the maximum annual debt service limit.

Since meeting or exceeding the limit would stop the state from issuing more debt and could hurt its credit rating, the LBB researched the issue and found that the BRB assumed interest rates, lengths of bond terms, and types of debt service payments for unissued debt that overstated the likely cost and resulted in an overall debt service calculation that reflected worst-case scenario rather than current issuing practices. The LBB also found

that the Attorney General's Office advised the BRB that because it had used the same methodology and assumptions for so long, it had set a precedent that could not be changed without legislative authorization. CSHB 3665 would give that authority to the BRB to update its methodology and would require the methodology to be published every year, which would be a good step toward more transparency for this complicated aspect of state government finance.

Article 4. Electronic pay cards. By requiring all state employees and retirees to receive their salaries by direct deposit or by using an electronic pay card, CSHB 3665 would save dollars by eliminating the paper, postage, storage, processing time, and personnel costs of issuing paper checks. The LBB recommended this change in the *GEER*, which noted that 10 percent of payroll and annuity payments were still made by paper check in 2010.

The Texas Workforce Commission, the attorney general, and the Health and Human Services Commission use electronic pay cards to pay unemployment, child support, and food stamp benefits, and they have reported improved efficiencies. The fiscal note states that the full impact could not be assessed until full implementation in 2013, but assumes that the administrative cost of implementing electronic pay cards would be offset with administrative savings from issuing fewer paper checks.

Article 5. Publish session laws electronically. CSHB 3665 would result in an estimated fiscal note gain in general revenue of $75,000 every even-numbered year by discontinuing the hard-copy publishing and distribution of session laws. These savings would be assumed in CSHB 1.

CSHB 3665 also would require the session laws to be indexed and searchable from the secretary of state's website. The secretary of state has been electronically publishing the session laws in an unsearchable format since the 79th Legislature in 2005, so requiring this searchable format would be the next logical step for improved government transparency.

Article 6. Collection of fees by attorney general. CSHB 3665 would result in an estimated gain in general revenue of $1,969,220 every year by allowing the attorney general to collect fees for electronic filing of documents, outside counsel invoice reviews, and toll road comprehensive development agreement reviews. This fee revenue would be assumed in CSHB 1.

Electronic filing would improve efficiencies as well as save money; the Open Records Division processes about 20,000 open-records requests each year and the administrative costs of handling that much paper are significant. The Attorney General's Office already is in the planning stages of implementing an electronic filing system, and the fee would offset those implementation costs.

Requiring the attorney general to review outside counsel invoices would be an appropriate oversight function. The attorney general would require a deposit of the estimated invoice review fee at the same time the contract between the state agency and outside counsel was executed. The deposit would be a good way to ensure the outside legal firm got paid promptly and would ensure that the state agency got the legal service it needed without delay. The attorney general would set the fee by rule to ensure that those affected could give their feedback on what would be fair. The invoices would be reviewed, the review fee would be drawn down against the deposit, and the attorney general and outside counsel would settle up at the end of the contract term.

The attorney general already is required to review the complex multibillion-dollar toll road comprehensive development agreements to make sure they meet state law and constitutional requirements. CSHB 3665 would appropriately allow the attorney general to charge a fee for this time-consuming review. The attorney general started reviewing comprehensive development agreements in 2008 and has reviewed a few each year in 2009 and 2010. The attorney general would set the fee by rule to ensure that those affected could give their feedback on what would be fair.

Article 7. Texas Preservation Trust Fund Account. CSHB 3665 would result in a one-time estimated fiscal note gain to general revenue of $10,089,461 in fiscal 2012. This revenue gain would be assumed in CSHB 1. The revenue gain would result from transferring the Texas Historical Commission's preservation grant funds from the safekeeping trust outside the treasury to a general revenue-dedicated account. CSHB 3665 would allow the funds to be used for operating expenses of the Historical Commission. Allowing the agency to use the money for operations would be necessary because even after the appropriation of some of these funds for operations, the agency would still experience a 74-percent cut to its operations budget from the last biennium.

Article 8. Department of Information Resources programs. CSHB 3665 would transfer the existing fund balance of $2,550,000 from the Department of Information Resources (DIR) telecommunications revolving fund to the general revenue fund. Funds from the telecommunications revolving fund have been used for cyber-security purposes for years, but this bill would give DIR the explicit legislative authority to use the money for that purpose.

Article 9. Lobby registration fees. CSHB 3665 would result in an estimated fiscal note gain in general revenue of up to $1,477,000 for fiscal 2012-2013, resulting from the increase in lobbyist registration fees. CSHB 1 would appropriate, contingent on fee authority, collection, and other factors, $187,500 each year to the Ethics Commission from this fee for its operations.

OPPONENTS SAY:

Article 1. Agency authorizations. Section 1.02(4) is too broadly worded, and would give state agencies authority to change program eligibility, services, and benefits without legislative direction or oversight.

Article 6. Collection of fees by attorney general. Charging a fee for the electronic filing of documents could be a deterrent to using that option. In addition, the fee charged for the review of toll road comprehensive development agreements should not be allowed to be a percentage of the cost of the toll project; that prohibition should be specified in CSHB 3665 as it is in SB 731. SB 731 also makes clear that the amount of the fee could not exceed reasonable attorney's fees charged for similar legal services in the private sector.

Article 7. Texas Preservation Trust Fund Account. The Texas Preservation Trust Fund Account should be preserved as a separate account in the safekeeping trust to maximize funding for historical preservation grants as intended. Since 2005, the Historical Commission has awarded over $2 million in grants for historical preservation. Reducing or eliminating grants for brick-and-mortar preservation of historic parks, bridges, and buildings would be detrimental to Texas' cultural history as few other sources exist for its preservation.

Article 8. Department of Information Resources programs. DIR now has access to the telecommunications revolving fund to make time-sensitive upgrades to capitol complex phone systems when necessary.

Transferring funds from the revolving fund to general revenue could prevent upgrades from happening in a timely manner.

Article 9. Lobby registration fees. CSHB 3665 could double the fee for some lobbyists to register, from $500 to $1,000. Lobbyists would bear the highest fees of any profession. This increase could result in fewer registrations for those who chose to register because they were close to the spending threshold. Fewer registrations would result in less disclosure, but more disclosure is what should be encouraged.

OTHER OPPONENTS SAY:

Article 4. Electronic pay cards. HB 3665 should provide more direction for the comptroller regarding how to protect and educate people who would transition from checks to electronic pay cards (debit cards) or direct deposit. Direct deposit should be the default, or the preferred option, because debit cards do not allow for savings, but rather are set up only for spending. Debit cards also would not allow employees to earn interest as a bank account would. In addition to requiring electronic pay card vendors to be able to provide 24-hour access to pay card holders' funds, which the bill does, the bill should require that only a reasonable, minimal fee should be charged for that access.

The bill also should require the comptroller, as well as all the state agencies using electronic means for transferring funds, to make information available about the choices people make regarding direct deposit and debit cards, and any difficulties reported. This would help any attempt in the future to centralize electronic state payments, which are currently on different platforms.

NOTES:

SB 1579 by Ogden, which contains some similar provisions to CSHB 3665 concerning fiscal matters relating to general government, was reported favorably, as substituted, by the Senate Finance Committee on April 26.

HB 2866 by Harper Brown, which would allow the attorney general to charge a fee for the electronic filing of documents until 2015, passed the House by 132-10 on April 11 and was considered in a public hearing on May 2 by the Senate Government Organization Committee.

SB 731 by Nichols, which would authorize fees for legal sufficiency reviews of comprehensive development agreements by the attorney general, passed the Senate by 31-0 on March 31 and was reported

favorably, as substituted, by the House Transportation Committee on April 20.

SUBJECT: State fiscal matters related to public and higher education

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 21 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Eiland, Giddings, Gooden, Hochberg, S, King, Margo, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Zerwas

4 nays — Dukes, Johnson, McClendon, Villarreal

2 absent — Martinez, Morrison

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Since the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the Senate Finance Committee reported the bill favorably, as substituted, on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13*, March 31, 2011.

DIGEST: CSHB 3639 would authorize state agencies, schools, and higher education institutions that received appropriations under Article 3, education, of the general appropriations act to reduce or recover expenditures by:

- consolidating any reports or publications the entity was required to make and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;

- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who received benefits from the agency to ensure that benefits were received by the most deserving people, consistent with the purpose of the benefits;
- allowing agency communications, including applications, notices, billing statements, receipts, and certificates, to be sent or delivered by e-mail or through the Internet; and
- adopting and collecting fees to cover agency costs.

CSHB 3639 would amend portions of the Education Code and other statutes as required to implement provisions for public and higher education in the general appropriations act for fiscal 2012-2013.

Teacher Retirement System. The bill would remove the requirement that the state's contribution rate to the Teacher Retirement System (TRS) be equal to or above the employee contribution rate. The bill would decrease the state contribution rate to the TRS health insurance for retired members from 1 percent to 0.5 percent. Both provisions would take effect on September 1, 2011.

Foundation School Program. The bill would defer the August 2013 payment from the Foundation School Program to school districts until between September 5, 2013 and September 10, 2013.

The bill would repeal current law requiring the comptroller to transfer money from the State Lottery Account to the Foundation School Fund each August.

Advanced Placement. The bill would amend the eligibility criteria for awarding advanced placement (AP) exam fee subsidies to students. Eligible students would have to demonstrate financial need, not just academic merit.

Early High School Graduation Scholarship Program. A student could not receive an award through the Early High School Graduation Scholarship Program if he or she graduated from high school on or after September 1, 2011. The bill would remove the requirement that savings to the public school finance system from the program be used to provide exemptions for higher education tuition for certain students.

Tuition exemptions. The bill would require the education commissioner to transfer funds collected by the Texas Education Agency for tuition exemptions to the Texas Higher Education Coordinating Board to distribute to higher education institutions for certain tuition exemptions.

The bill would limit eligibility for educational aide tuition exemptions to persons seeking certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers.

These provisions would apply beginning with tuition and fees charged for the 2011 fall semester.

Dual credit course funding. The bill would prohibit physical education courses from counting toward the contact hours attributable for dual credit funding for the junior college's proportionate share of state appropriations.

This provision would apply beginning with funding for the 2011 fall semester.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 3639 would permit the state to save money during tough economic times while focusing available funds on the most pressing needs.

Teacher Retirement System. The bill would permit the state to contribute less to TRS, which is necessary in order to enact the appropriations made by CSHB 1. While the bill would allow a reduction in the state contribution to the fund, TRS would remain financially stable, with a balance of more than $100 billion. It may be harder to achieve full solvency by decreasing contributions for a few years, but the proposed change would not irrevocably damage the fund.

The bill also would permit the state to contribute less to the TRS health insurance plan for retirees, known as TRS Care, which is necessary in order to enact the appropriations made by CSHB 1. The proposal would not harm the fund balance of TRS Care, which currently is about $805 million. The fund would be valued at around $66 million at the end of 2012 if the state contributed at the rate of 0.5 percent.

While the state must maintain a certain level of funding in order to receive funds through the federal Early Retirement Reinsurance Program (ERRP), there is no standard definition or quantifiable measure of the federal government's expectations for the state's contribution.

Foundation School Program. Deferring the Foundation School Program payment would provide significant relief to the state in fiscal 2012 while still providing the same level of support to local school districts. This would be a simple change that would minimally impact school districts but would substantially affect the budget, and it is expected to save $1.8 billion in fiscal 2013. The payment delay would be for only a couple of weeks, and school districts would have enough lead time to appropriately budget their spending. Additionally, keeping the deferral permanent would prevent worse problems next biennium if the state had to resume the August payment. As in the past, when state finances improve, the Legislature could consider restoring the previous payment schedule.

Advanced Placement. The state should not continue to subsidize exam fees for all students. CSHB 3639 would revise the program, through which students receive subsidies toward the AP or International Baccalaureate Exam fees, to restrict eligibility to students based on financial need. In its *Government Effectiveness and Efficiency Report (GEER)*, the Legislative Budget Board (LBB) determined that the program was unsuccessful at increasing student achievement but caused a significant cost to the state. The incentives provided by the program have not increased the number of students successfully passing AP and International Baccalaureate exams. Changing the eligibility requirements would ensure that the state's money was spent more effectively.

Early High School Graduation Scholarship Program. The bill would close the Early High School Graduation Scholarship Program, the scholarship program for high school students finishing in less than four years, in September 2012 and would eliminate it in 2017. There is no evidence that the program provides an effective incentive for high school students to finish early, so closing it would present an opportunity for the state to spend its money more efficiently and effectively.

Tuition exemptions. To address the growing need for more qualified teachers, Texas established the Educational Aide Exemption Program, which exempts certain educational classroom aides from tuition and some fees. Awards vary based on the number of hours taken by the student and

the relative costs at the institution. The Legislature appropriated about $28.7 million to this program for fiscal 2010-2011. In the current budget climate, it would be proper to target this small financial aid program toward people seeking certification in specific subject areas — like bilingual education, math, and science — that are experiencing critical teacher shortages.

The shortage of teachers in critical areas is forcing otherwise unqualified teachers into these subject areas. If there are shortages in certain subject areas, it would make sense to find ways to help a teacher attain the necessary certification to address the shortage. This would offer an incentive for teachers to work in disadvantaged schools.

Dual credit course offerings. Dual credit enrollment is growing rapidly in the state. Current law allows public school districts and community colleges to receive state funding for dual credit courses and requires all school districts to allow students to earn the equivalent of 12 hours of college credit while in high school. According to the LBB, from fall 2002 to fall 2009, dual credit enrollment increased more than 200 percent. Ensuring course quality and limiting dual credit courses to those with academic value would further improve college readiness.

As the number of enrolled students and dual credit courses have increased, ensuring the quality of dual credit programs has become more critical. In its *GEER*, the LBB said that the more limited the number of courses approved for dual credit, the easier it would be to monitor quality and to provide high school students with appropriate support. Very few dual credit courses do not count toward a certificate or degree. In general, all courses except for developmental education, basic skills, and noncredit continuing education courses can count toward a degree or certificate. Some have questioned the academic value of physical education courses for college readiness. Accordingly, the LBB recommended that physical education dual credit courses be prohibited from being available for dual credit funding. This would not prohibit students from enrolling in and paying for physical education courses themselves.

In fiscal 2009, 1,900 Texas high school students received both high school and college credit for physical education courses. Physical education courses are not included as part of the required 36 semester-credit hour core curriculum for colleges, so not every community college requires

them to earn an associate's degree. According to the LBB, several other states do not allow physical education courses to count for dual credit.

OPPONENTS SAY:

Teacher Retirement System. The bill's provisions allowing a lower state contribution would damage the solvency of TRS. At the least, the bill should require the provisions pertaining to TRS to expire so a future Legislature could decide whether to renew it.

The bill would permit the state to contribute less to TRS, which is unfair and inequitable. Decreasing the state's contribution rate would jeopardize the long-term solvency of the fund. The state has an obligation to protect the TRS pension fund for retired teachers who live on fixed incomes. Potential increases in health insurance premiums would further erode retirees' fixed incomes, which decrease in value each year due to inflation.

Decreasing the state's contribution rate to the retiree health insurance program would be too risky. The savings achieved by lowering the state contribution rate would not justify the potential loss of about $150 million in fiscal 2012-13 federal funding to TRS-Care from a possible decrease in federal ERRP funds. Lowering the state's contribution rate also would increase the chance that the financial burden to meet federal maintenance-of-effort requirements would shift onto school districts.

Foundation School Program payments. School districts count on this funding and need the funding as soon as they can get it. In these tight budgetary times, waiting a couple of extra weeks to receive FSP funding would put some school districts in a bind. Many districts do not expect to have sufficient savings to finance the remainder of 2012 while they wait for the state's payment. Additionally, this would be a "sleight of hand" maneuver that does nothing to resolve the structural and other tax and spending problems that are creating the state's shortfall and budget challenges. This deferral would create an even bigger budget hole in the future when the state resumes its normal August payment period.

Advanced placement. The bill does not adequately define the financial need that a student would have to demonstrate to qualify for the AP subsidy.

Eliminating incentives to graduate early and to take AP courses would decrease the quality of education for all students. Some students require

the monetary reward to achieve their potential by pursuing early graduation or advanced courses.

Tuition exemptions. The bill would eliminate tuition exemptions for certain low-income students, which could limit their access to higher education. The bill could deny or limit access to higher education for educational aides desiring to become teachers.

NOTES:

According to the bill's fiscal note, CSHB 3639 would have a positive impact of $2.5 billion in fiscal 2012-2013.

The companion bill, SB 1581 by Ogden, was reported favorably, as substituted, by the Senate Finance Committee on April 26.

SUBJECT: State fiscal matters related to the judiciary

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 25 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Dukes, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas

0 nays

2 absent — Martinez, Morrison

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the bill was reported favorably, as substituted, by the Senate Finance Committee on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13*, March 31, 2011.

DIGEST: HB 3648 would amend portions of the Government Code and other statutes as required to implement provisions for the judiciary in the general appropriations act for fiscal 2012-13.

Agency authorizations. CSHB 3648 would authorize state agencies that receive appropriations under Article 4, judiciary, of the general appropriations act to reduce or recover expenditures by:

- consolidating required reports or publications and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;
- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who receive benefits from the agency to ensure the benefits were received by the most deserving people, consistent with the purpose for the benefits;
- allowing agency communications with people and required agency documents delivered to or by the agency, including applications, notices, billing statements, receipts, and certificates, to be delivered by email or through the Internet; and
- adopting and collecting fees to cover agency costs.

Payments not to exceed general appropriations act amounts. HB 3648 would prohibit payments, including those for salaries, travel and office expenses, from exceeding the amounts authorized in the general appropriations act for various positions, including visiting judges, district judges, prosecuting attorneys, and nonresident witnesses, regardless of other law. Supplements and salary reimbursements to counties for prosecutors, county judges, and lawyers appointed to death penalty cases also would be limited to the amounts set in the general appropriations act, regardless of other law.

Longevity pay for prosecutors. HB 3648 would change payments to counties for longevity pay supplements for assistant prosecutors. If sufficient funds were not available to meet the requests made by counties in a given period, the county would not be entitled to receive the balance of the funds at a later date, and the longevity pay program would be suspended to the extent of any insufficiency.

Process server certification fees. HB 3648 would allow the Process Server Review Board to recommend fees to the Texas Supreme Court that would be charged for process server certification and certification renewal. The Texas Supreme Court would have to approve the recommended fees before the fees could be collected. Fees would be prorated to cover periods less than a full term. The entire certification renewal fee would be required on the expiration date of the prorated period. The fees established by HB 3648 would apply to persons who held or applied for a process server certification on or after the bill's effective date.

The Office of Court Administration of the Texas Judicial System (OCA) would be required to set up a certification division to oversee the regulatory programs assigned to it. The OCA would be authorized to collect the certification and renewal fees, which then would be sent to the comptroller for deposit into the General Revenue Fund. Fees collected would be available to be appropriated to the OCA to support the process server and guardian regulatory programs.

HB 3648 would authorize the Process Server Review Board members, who would not be entitled to compensation, to receive reimbursement for actual and necessary expenses incurred in traveling and performing official board duties.

Judicial and Court Personnel Training Fund. HB 3648 would change the classification of the Judicial and Court Personnel Training Fund from an account in the state treasury to a dedicated account in the General Revenue Fund. Because the moneys would then already be in the General Revenue Fund, the bill would eliminate a provision that required balances in excess of $500,000 to be transferred to the General Revenue Fund at the end of each fiscal year.

Juror pay. HB 3648 would eliminate the statutory rate of $40 currently provided to jurors as reimbursement for travel and other expenses, and would eliminate the $34 reimbursement rate paid by the state to the county to cover a portion of that cost. Instead of referencing a specific dollar amount, the bill would tie the amount paid by the county to a juror and the amount reimbursed by the state to a county to the amounts provided in the general appropriations act for those purposes.

If reimbursement to a county for juror pay is reduced under current law, the bill would allow the comptroller, as provided by rule, to apportion the payment of the balance owed, and would eliminate the requirement that the comptroller pay the balance owed to the county when sufficient money was available or with the next payment. The comptroller's rules could permit a different rate of reimbursement for each quarterly payment.

Effective Date. The bill would take effect September 1, 2011.

SUPPORTERS SAY:

The changes made in HB 3648 would result in an estimated net positive fiscal note impact of $23,964,992 in general revenue funds for fiscal 2012-2013.

Agency authorizations. These authorizations would give agencies flexibility and control in reducing or recovering expenditures in ways other than those specifically identified in this bill. They have in-depth knowledge of their programs and operations and could find ways to meet program needs while maximizing the use of appropriated funds.

Longevity pay for prosecutors. The state funds for longevity pay supplements for county prosecutors are derived from a percentage of surety bond posting costs. The collections have thus far been sufficient for the state to make its quarterly payments, and there is no indication those funds would diminish. Prosecutors would in all likelihood continue to receive these state longevity supplements even though this bill would provide that if a shortfall did happen in a quarterly payment, the comptroller would not be required to make up the shortfall when funds later were available. The county is not required under current law to pay longevity supplements if the county does not receive funds from the comptroller, so the county would not be financially harmed by this change in law.

Process server certification fees. CSHB 3648 would relieve Texas taxpayers of the burden of paying for services provided by the Office of Court Administration (OCA) in regulating process servers. The Process Server Review Board was established by Texas Supreme Court order in 2005, and the OCA has been administering the process server certification program since its inception without requiring fees. About 6,000 process servers benefiting from the program have essentially received free services for the past six years. Fees generated by CSHB 3648 would pay for the program and would allow process servers to support the regulation of their profession as other professionals do. Process servers receive a three-year license.

If an annual fee of $75 was recommended and approved, the bill could generate more than $1 million a year. The bill would authorize the use of the fee revenue for OCA's process server and guardian regulatory programs, which would be the most efficient use of the money, given that the same staff works on both programs and the current guardian program fees do not cover its costs. It would not be practical or efficient to hire separate staff to oversee these regulatory programs just to match the revenue source. If a Sunset date for the fee were established in 2013, as SB 1582 would do, it could result in some process servers paying the fee

and others not paying the fee, since process servers have a three-year license.

Many process servers who would be affected by this fee have expressed support for it. The Texas Process Servers Association, one of the oldest process servers' organizations in Texas, voted unanimously to support HB 1614, which also would authorize this fee.

Judicial and Court Personnel Training Fund. The General Revenue Fund would realize $22,376,000 in fiscal 2012-13 by reclassifying the Judicial and Court Personnel Training Fund administered by the Court of Criminal Appeals from an "other fund" in the state treasury to a general revenue account.

Juror pay. The changes in the bill would result in a sum certain for juror pay in the general appropriations act that would be paid quarterly to the counties in different amounts, depending on the reimbursement claims coming in each quarter. The comptroller could set by rule a maximum reimbursement of $40 paid for each juror so that a county could get only what they paid out and no more, regardless of the reimbursements filed in that quarter.

OPPONENTS SAY:

Agency authorizations. Sec. 1.02(4) is too broadly worded and would give state agencies authority to change program eligibility, services, and benefits without legislative direction or oversight.

Longevity pay for prosecutors. Although funding for this program has been stable, the Legislature could decide to reduce the appropriation out of the surety bond cost fund. It would make more sense to continue to allow back pay to be paid if and when it became available.

Process server certification fees. HB 3648 would increase the fees for the clients of process servers. This increase then would add to the costs of services for the clients of attorneys and other professionals who use process servers. Although the fee was backed by a large process server organization, the number of process servers the organization represents is very small relative to the number who would be affected. The organization's membership of more than 1,000 members amounts to just one-sixth representation of all process servers in Texas.

Any process server certification fee established should be set in an amount just high enough to cover the costs of the process server regulatory program and no more. HB 3648 inappropriately would allow fee revenue from process servers to be used for the guardian regulatory program. In addition, the fee itself should be capped and a Sunset date established, as would be done with the Senate version, SB 1582.

Juror pay. Juror pay could be significantly reduced, which would go against the rationale of the $40 a day minimum reimbursement amount intended to encourage jurors to serve. An unlikely but potential problem with not having exact amounts in statute is that counties could end up getting reimbursed by the state more than $40 a day per juror, more than what they paid, if very few counties file for the reimbursement.

OTHER OPPONENTS SAY:

Process server certification fees. HB 3648 would allow an unauthorized entity to obtain funding to regulate the process server industry. Since Texas lawmakers did not create the Process Server Review Board by statute, the Legislature cannot fund the board's regulation. This would violate the principle of government separation of powers. Since the legislative intent has been to allow the process server industry to go unregulated, HB 3648 is unnecessary. Bills with process server certification fees were not passed during the past two legislative sessions, so previous lawmakers saw no need to fund this program.

NOTES:

SB 1582 by Ogden, which has similar provisions concerning fiscal matters involving the judiciary, passed the Senate by 24-7 (Birdwell, Carona, Davis, Ellis, Fraser, Gallegos, Harris) on April 29 and was referred to the House Appropriations Committee on May 2.

HB 1614 by Gooden, which also would authorize process server certification fees, passed the House by 101-46 on April 18 and was referred to the Senate Jurisprudence Committee on April 26.

SUBJECT: State fiscal matters related to natural resources and environment

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 25 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Dukes, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas

0 nays

2 absent — Martinez, Morrison

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Since the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the Senate Finance Committee reported the bill favorably, as substituted, on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13*, March 31, 2011.

DIGEST: CSHB 3418 would authorize state agencies that received appropriations under Article 6, natural resources, of the general appropriations act to reduce or recover expenditures by:

- consolidating required reports or publications and filing or delivering them exclusively by electronic means;

- extending the effective period of any license, permit, or registration granted or administered by the agency;
- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who received benefits from the agency to ensure that benefits were received by the most deserving people, consistent with the purpose of the benefits;
- allowing agency communications, including applications, notices, billing statements, receipts, and certificates, to be delivered by e-mail or through the Internet; and
- adopting and collecting fees to cover agency costs.

Texas Animal Health Commission (TAHC) user fee. CSHB 3418 would amend the Agriculture Code to authorize TAHC, by rule, to set and collect a user fee to recover costs for any service for which a cost was incurred, including not just inspections but also disease testing and related services.

Petroleum product delivery fee. CSHB 3418 would extend the collection of petroleum product fees through fiscal year 2015 and would reduce the amounts to be collected.

Coastal erosion. CSHB 3418 would require the General Land Office to include in its biennial report to the Legislature a 10-year or more plan for coastal erosion response studies and projects that could be funded by the coastal erosion response account.

Texas farm and ranch lands conservation program. CSHB 3418 would eliminate the 50-percent match requirement for grants under the Texas farm and ranch lands conservation program.

Effective date. The bill would take effect September 1, 2011.

SUPPORTERS SAY:

Texas Animal Health Commission (TAHC) user fee. The proposed spending reductions contained in CSHB 1 would negatively impact the ability of TAHC to prevent, eradicate, and control disease and parasites affecting the health and marketability of Texas livestock and poultry. CSHB 3418 would provide TAHC with the authority needed to establish and collect user fees necessary to help maintain the agency's core functions. This would be a cost recovery measure so that the state would

not have to subsidize the services of the agency. This change is assumed in CSHB 1.

The Texas livestock and poultry industries have stated that they support this bill because they rely on the agency to ensure that sick or suspect animals are not allowed into Texas and that other state, federal, and international health agencies are confident in the health and safety of Texas livestock.

Petroleum product delivery fee. CSHB 3418 would reauthorize the petroleum product delivery fee for another four years. This fee was used by the Texas Commission on Environmental Quality (TCEQ) to fund the remediation of certain sites contaminated by motor fuels released from underground storage tanks. The fee also was used to fund TCEQ's regulatory program for petroleum storage tanks.

The number of eligible sites has fallen from 2,500 sites in 2007 to 650 sites today. Lowering the fee would reflect the program's current needs and would ensure appropriate resources were available for TCEQ to accomplish its mission under the program. The reauthorization of this fee is supported by the industry.

Texas farm and ranch lands conservation program. CSHB 3418 would eliminate the 50-percent match requirement for grants under the Texas farm and ranch lands conservation program. This would provide flexibility to the Texas Farm and Ranch Lands Conservation Council by allowing it to determine a project's match requirements.

OPPONENTS SAY:

The bill would allow TAHC to significantly raise fees for a wide variety of services. This would in effect raise taxes on many Texas businesses that raise, keep, and process animals. While these costs technically may be fees, they would, in effect, be taxes for the people who would have to pay them.

NOTES:

According to the fiscal note, CSHB 3418 would have a positive impact of about $2.3 million in general revenue-related funds through the next biennium.

Texas Animal Health Commission (TAHC) fee. According to TAHC, an additional annual revenue target of $5.1 million per fiscal year would be generated from a proposed broad-based, equitably derived fee covering

all species; all segments of the livestock, poultry and exotic livestock industries; and all marketing avenues and production methods. However, since a fee proposal has not been specifically identified by TAHC to raise this revenue, the revenue projections only include laboratory testing and a limited subset of inspection fees.

Laboratory testing fees are projected to generate $731,500 per fiscal year. Inspection fees would generate an estimated $232,725 per fiscal year. The total annual revenue gain from these two sources to general revenue is estimated to be $964,225 or $1,928,450 for fiscal 2012-13.

TAHC expects the new revenue collection responsibilities related to implementing the provisions of this bill would require an additional four full-time equivalent positions (including a clerk, two accountants, and a systems analyst) at an annual cost of $223,947; the one-time cost of $75,000 for billing or revenue software; $20,000 for annual software license fee costs; and $26,000 for the one-time purchase of additional computer equipment such as microcomputers, a printer, and a server with a network storage system. The implementation costs for fiscal year 2012 would total $324,947 and would decline to $243,947 per fiscal year for fiscal 2013 to 2015. The implementation cost would then increase to $269,947 in fiscal 2016 to reflect replacement costs for computer hardware.

Petroleum product delivery fee. According to the comptroller, extending the fee would generate an estimated:

- fiscal 2012: $431,000 to general revenue and $21.1 million to the general revenue-dedicated Petroleum Storage Tank Remediation (PSTR) account;
- fiscal 2013: $483,000 to general revenue and $23.7 million to the PSTR account;
- fiscal 2014: $486,000 to general revenue and $23.8 million to the PSTR account; and
- fiscal 2015: $489,000 to general revenue and $23.9 million to the PSTR account.

The comptroller also estimates a residual remittance of fees related to collection timing issues of $41,000 to general revenue and $2 million to the PSTR account in fiscal year 2016.

The companion bill, SB 1584 by Ogden, was reported favorably, as substituted, by the Senate Finance Committee on April 26.

HB 1992 by Hardcastle, which also would allow TAHC to set user fees, was set on the May 2 General State Calendar.

SUBJECT: Funding an interoperable emergency radio infrastructure

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — S. Miller, Fletcher, Beck, Burnam, Driver, Flynn, Peña, Walle

0 nays

1 absent — Mallory Caraway

WITNESSES: For — Gary Chandler, Texas Department of Public Safety Association; Vernon Cook, Roberts County, PRPC, TAC; Joe Peters, Sheriffs' Association of Texas; Clay Taylor, Dept. of Public Safety Officers Association; *(Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Randy Cain, Texas Fire Chiefs Association; Dana Chiodo, Technology Association of America; Aurora Flores, Texas Association of Counties; Jim Grace, Motorola; Roger Harmon, Johnson County; Donald Lee, Michael Vasquez, Texas Conference of Urban Counties; Shannon Ratliff, The Corporation for Texas Regionalism; Keith Williams, Harris Corp.)

Against — None

On — *(Registered, but did not testify*: Paul Mallett, Commission on State Emergency Communication; Mike Simpson, Department of Public Safety)

BACKGROUND: In 2008, the Texas Radio Coalition (TxRC) provided recommendations so that Texas could meet U.S. Department of Homeland Security standards for a statewide network of interoperable radio systems.

The Department of Public Safety (DPS) worked with TxRC during the interim to review and revise those recommendations. DPS has estimated that the total cost of the program would be $813 million, with $393 million provided in federal grants through 2015. The state's share would be $420 million, or $84 million a year for the next five years.

Local Government Code, sec. 133.102(a) requires the comptroller to allocate money received from certain court costs to various criminal justice programs, including the fugitive apprehension program.

DIGEST:

HB 442 would create the emergency radio infrastructure account in the General Revenue Fund. It would amend Local Government Code, sec. 133.102(e) to delete allocation of court cost funds to the fugitive apprehension account and allocate about 12 percent of the funds to the newly created emergency radio infrastructure account. The funds would be provided from court costs and interest collected from money held in the account.

The account could be used for:

- planning, development, provision, enhancement, or ongoing maintenance of an interoperable statewide emergency radio infrastructure;
- implementation of the state communications interoperability plan;
- development of a regional or state interoperable radio communications system;
- grants to regional councils of governments or state agencies requiring emergency radio communications infrastructure; or
- other public safety purposes.

Funds in the account could not be used to purchase or maintain radio subscriber equipment.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

HB 442 would provide a dedicated source of funding to develop, maintain, and replace interoperable communications systems for emergency first responders statewide, allowing them to communicate across agencies and jurisdictions. Multiple state and local emergency responders have recently been charged with containing wildfires throughout the state. Maintaining effective communication can be a matter of life and death to first responders and citizens. Seamless emergency communication networks also are necessary for hurricane evacuations and integrated border security operations.

The bill would help provide a unified approach to interoperability. Texas has several different radio systems that are used by federal, state, and local emergency responders and law enforcement officials. These overlapping systems fail to communicate with each other for several reasons, including frequency variations, age, incompatible vendor equipment, or simple lack of coordination. Some radio towers are more than 35 years old but remain

in use despite being deteriorated and obsolete. Law enforcement and first responders cannot depend on the commercial systems used for cellular telephones, which could become overloaded and unavailable in an emergency.

Development and maintenance of an interoperable communication system would serve a law enforcement function and should be funded through court costs. This would be a readily available and reliable source of revenue as the Legislature considers other potential sources of funding.

Even though the funds available through fugitive apprehension would not cover the costs estimated in the TxRC and DPS reports, there would be additional costs for delaying this program another two years. TxRC already has increased its estimate of the funds needed for the program from its 2008 estimate.

HB 442 would redirect $22.9 million expected from the fugitive apprehension account, which has been declared dormant, into an identifiable and needed purpose rather than hold that money for comptroller certification of the budget. There would be no net change in the overall biennial budget.

OPPONENTS SAY:

HB 442 would provide only $22.9 million in yearly funding, which would be significantly less than the $84 million a year that DPS estimates would be needed to upgrade and modernize the emergency communications system.

NOTES:

According to the fiscal note, the fugitive apprehension account has lost its dedication and is considered a dormant account. The funds in the account have been transferred to general revenue, and the estimated $22.9 million collected in future years would be deposited into the General Revenue Fund.

SUBJECT: Requiring school districts to request food allergy information

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Eissler, Hochberg, Allen, Aycock, Dutton, Huberty, Shelton, T. Smith

0 nays

3 absent — Guillen, Strama, Weber

WITNESSES: For — Chris Burnett; Jessica Davila-Burnett (*Registered, but did not testify*: Troy Alexander, Texas Medical Association; Jay Arnold, Texas PTA; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Carrie Kroll, Texas Pediatric Society; Casey McCreary, Texas Association of School Administrators; Ted Melina Raab, Texas AFT; Julie Shields, Texas Association of School Boards)

Against — None

DIGEST: CSHB 742 would require a school district to request that the parent or guardian of a student disclose whether the student had a severe food allergy. The school district would request parents or guardians to disclose the specific food or foods to which the student was allergic and the nature of the allergic reaction. The information would be included in the student's records, but would not be placed in the student's medical files unless the school received documentation from a physician.

A school district would be required to maintain the confidentiality of the information provided and could disclose the information to teachers, school counselors, school nurses, and other appropriate school personnel only to the extent it was consistent with the district's current policies for such records and permissible under the federal Family Educational Rights and Privacy Act.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply beginning with the 2011-2012 school year.

SUPPORTERS SAY:

CSHB 742 would add a layer of security for students with severe food allergies. School districts and teachers often are unaware of potentially life-threatening allergies their students may have. This bill would provide awareness and equip school districts with the information necessary to provide preventative measures. The bill would not be an unfunded mandate on school districts because districts could comply with the bill using existing resources.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Requirements for operating personal watercraft and certain boats

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 6 ayes — Guillen, Elkins, Deshotel, Kuempel, Larson, T. Smith

0 nays

3 absent — Dukes, T. King, Price

WITNESSES: For — Tim Lindt, Britteny Sage Lindt, Britteny Sage Lindt Fund - 501(c)3, Victims of Fatal Watercraft Incidents; (*Registered, but did not testify:* Rod Malone, Recreation Boating Safety Advisory Panel, Boating Trades Association of Texas)

Against — None

On — (*Registered, but did not testify:* Nancy Herron, Jeffery Parrish, Texas Parks and Wildlife Department)

BACKGROUND: Texas Parks and Wildlife Code, ch. 31 sets out the state's water safety policy and defines several terms related to water safety. Texas law defines a personal watercraft as a motorboat designed to be operated while the person is sitting, standing, or kneeling on the vessel rather than sitting or standing inside the vessel. A motorboat includes any vessel either propelled or designed to be propelled by machinery, whether or not the machinery is permanently or temporarily attached or is the main cause of propulsion.

Age limits. Under current law, those under age 16 may not operate either personal watercraft or a motorboat with horsepower of over 15 unless the underage operator is accompanied by an adult or is at least 13 and has successfully completed a boating safety course prescribed and approved by the Parks and Wildlife Department (TPWD).

Boater education requirements. Parks and Wildlife Code, sec. 31.109 applies only to a person born on or after September 1, 1984, and who operates a vessel with more than 10 horsepower in its motor, or a windblown vessel longer than 14 feet. A person governed by this section

of the Parks and Wildlife Code must carry a photo identification card and a department-issued boater identification card. A violation occurs if a person governed by this provision is caught without possession of both cards. The violation will be dismissed by a court, however, if the person can submit proof of completion of a boater safety education course.

Exemption from boater education requirements. Certain persons are exempt from having to possess both the photo and boater identification cards. An operator is not subject to the boater education law if the person:

- holds a master's, mate's, or operator's license issued by the U. S. Coast Guard;
- is being supervised by an adult at least 18 years old who possesses a boater identification card or is exempt from the identification requirement on other bases;
- is at least 18 years old;
- as a nonresident of Texas has proof that he or she has successfully completed a boater education course or similar exam approved by TDPW; or
- is deemed exempt by TDPW rule.

DIGEST:

Age limits. CSHB 1395 would prohibit a person under age 13 from operating a personal watercraft or a motorboat with a manufacturer's rating of more than 15 unless the person was supervised by a person who could legally operate the watercraft or motorboat and who was physically on board while it was in motion. The bill would remove provisions from current law that allow a 13 year-old to operate a watercraft if the child has completed a boater safety course.

CSHB 1395 would amend Parks and Wildlife Code, sec. 31.109 to apply requirements to carry a photo ID and boater identification card when operating certain vessels to a person born on or after September 1, 1993. The requirement would apply to those operating a vessel powered by a motor that had a horsepower of more than 15 or a windblown vessel over 14 feet long. The person subject to this section would have to have a photo ID card and either a department-issued boater ID card or some proof of completion of requirements to obtain a vessel operator's license issued by the U.S. Coast Guard.

Exemption from boater education requirements. A person would be exempt from the boater education requirements if supervised by a person

who was at least 18 years old who either possessed the required boater ID card or was otherwise exempt. To be considered to be supervising the operator of a watercraft, the person would have to actually be on the watercraft while it was in motion. A customer of a business engaged in renting, showing, demonstrating, or testing boats would be exempt by rule of the Parks and Wildlife Commission from the boater education requirement. The commission would have to create a boater education deferral program, which would be made available at no cost to boat dealers, manufacturers, and distributors.

Boater education requirements. If a person charged with an offense for failing to have the required documentation could provide the court or prosecuting attorney, on or before the trial, with a qualifying document that was issued and valid at the time of the offense, the court would have to dismiss the charge.

If a person were charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess the necessary ID, the bill would allow the person, within 10 days of the offense, to make a written or oral motion requesting permission to take either:

- a boater education course approved by TPWD; or
- a vessel operator's licensing course provided by the U.S. Coast Guard.

The court would have to delay the proceedings and allow 90 days for the person to provide the court with written proof of successful completion of either course. The charge would be dismissed if the person successfully completed the course and the court accepted the proof.

The bill would apply only to offenses committed on or after the effective date of the bill. If any part of an offense were committed before the effective date of this bill, the offense would be considered committed before CSHB 1395's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

Recommended by the Advisory Panel on Recreational Boat Safety, CSHB 1395 would incorporate findings from a thorough examination of Texas boating safety issues conducted over the past two years. The advisory panel includes representatives of the public and the boat manufacturing and retail industries. Its recommendations for CSHB 1395 would reflect the views of Texas citizens and businesses.

Texas deaths per 100,000 registered boats were two times the national average two years ago, and CSHB 1395 would assist in removing Texas from an unfavorable spotlight. The advisory panel found that similar changes in other states reduced boating accidents and deaths, and the goal of the bill would be to replicate these results in Texas. For example, Alabama saw significant decreases in fatalities resulting from boating safety legislation that included increased boater safety education and a requirement for licenses for boat operators. The bill would incorporate valid research into Texas law and bring Texas water safety to a level comparable to other states.

Because TPWD already has the necessary infrastructure in place to accommodate increased boater education requirements, the bill would not create a burden on the department to implement changes. The boater education requirements under the bill could be fulfilled by those wishing to take courses without an unreasonable burden. Courses would be available not only at live sites, but also online.

CSHB 1395 also would prevent currently qualified people from being subjected to additional requirements in order to enjoy water recreation. The exemption date of 1993 set in the bill would excuse those who could legally operate boats and other watercraft without needing education and would phase in others slowly with no fiscal costs to the state. The 1993 exemption date also would produce no economic setback to the boat manufacturing and retail industries because of the deferrals and exemptions outlined in the bill, which would allow the industries to anticipate and absorb any changes in the boating market.

The bill would provide specific procedures for Texas courts to follow when assessing whether a dismissal was appropriate for a violation under the law. Opportunity for dismissal under the bill would help courts manage any increased burden on state dockets.

OPPONENTS SAY:

Although CSHB 1395 would attempt to educate more Texas citizens seeking to enjoy recreational activities on state waters, it could not guarantee that people would comply and thus lead to a reduction in accidents or fatalities. Enforcement would be difficult. CSHB 1395 would require operators to carry documentation of boater education, but even people who had the required documents might not carry them. In addition, nothing would prevent those without the education or documentation from entering the water and operating watercraft.

SUBJECT: Revising the metric for determining energy efficiency goals

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 8 ayes — Keffer, Crownover, Carter, J. Davis, C. Howard, Lozano, Sheffield, Strama

1 nay — Craddick

WITNESSES: For — Walt Baum, Association of Electric Companies of Texas; David Power, Public Citizen; Cyrus Reed, Lone Star Chapter, Sierra Club; Jason Ryan, Centerpoint Energy, Inc.; Tod Wickersham, Business for an Energy Efficient Texas Coalition; (*Registered, but did not testify*: Scott Anderson, Environmental Defense Fund; Jessica Akard, TXU Energy; Chad Blevins, Public Citizen of Texas Org; Joshua Houston, Texas Impact; Roy Jackson, Texas-New Mexico Power Company; Luke Metzger, Environment Texas; Phillip Oldham, Texas Association of Manufacturers; Matt Phillips, The Nature Conservancy of Texas; Robin Schneider, Texas Campaign for the Environment; Russel Smith, Texas Renewable Energy Industries Association; William Stout, Greater Edwards Aquifer Alliance; David Weinberg, Texas League of Conservation Voters)

Against — Bill Peacock, Texas Public Policy Foundation

BACKGROUND: In 1999, the 76th Legislature enacted SB 7 by Sibley, which established an energy efficiency program administered by the Public Utility Commission (PUC). The program is designed to reduce energy demand and lower energy costs. It is operated by utilities and funded through transmission and distribution rates.

HB 3693 by Straus, enacted in 2007, required each utility to institute efficiency and demand-side management programs sufficient to offset 10 percent of its 2007 growth in the peak load of residential and commercial customers. The percentage grew to 15 percent of 2008 peak demand growth by December 31, 2008, and 20 percent by December 31, 2009. HB 3693 also specified that the PUC conduct a utility-funded study on the future potential of energy efficiency. The study determined that improvements in efficiency could lower annual demand growth by 30 percent in 2010 and 50 percent in 2015. The report also recommended

changing the metric for energy efficiency goals to .5 percent of peak demand in 2010 and 1 percent of peak demand in 2015.

The PUC recently proposed rule amendments to increase the energy efficiency goal to 30 percent of the electric utility's annual growth in demand beginning December 31, 2013.

Municipally owned utilities and electric cooperatives are not subject to energy efficiency goals.

DIGEST:

CSHB 1629 would amend Utilities Code provisions on energy efficiency goals and programs, public information, and the participation of certain energy markets. It would amend energy efficiency goals and require electric utilities to submit energy efficiency plans to the Public Utility Commission (PUC). It would require the PUC to publish information on energy efficiency programs on its website.

Distributed renewable generation and renewable energy technology. CSHB 1629 would require that each electric utility in ERCOT use its best efforts to encourage and facilitate energy efficiency programs and demand response programs, including programs for demand-side renewable energy systems that would use distributed renewable generation or reduce the need for energy consumption by using a renewable energy technology, a geothermal heat pump, a solar water heater, or another natural mechanism of the environment.

Increased energy efficiency goals to reflect PUC rule. CSHB 1629 would codify recent PUC rules to increase the existing energy efficiency goals for residential and commercial customers from at least 10 percent to at least 30 percent of the electric utility's annual growth in demand by December 31 each year, beginning in 2013, and not less than the amount of energy efficiency to be acquired for the utility's residential and commercial customers for the most recent preceding year.

Change of metric to a percentage of peak demand. For electric utilities whose amount of energy efficiency reached four-tenths of one percent of the utility's summer peak demand for residential and commercial customers in the previous calendar year, the goal would change to not less than that amount by December 31 of each subsequent year, and not less than the amount of energy efficiency to be acquired for the utility's residential and commercial customers for the most recent preceding year.

Cost cap. The bill would make energy efficiency measures subject to cost ceilings established by the PUC.

Additional PUC rules. CSHB 1629 would add to existing rules and procedures to ensure that utilities achieved energy efficiency goals, including rules to ensure that:

- the costs associated with programs and any shareholder bonuses awarded were borne by the customer that received the services;
- programs were evaluated, measured, and verified using a framework established by the PUC that promoted effective program design and consistent and streamlined reporting; and
- an independent system operator or other person that was sufficiently independent of any producer or seller of electricity allowed participation in energy efficiency programs in all energy markets.

Alternatives to the program. An electric utility in an area outside of ERCOT could achieve the goal by providing rebates or incentives to its customers to promote the program or develop a new program that would offer the same cost-effectiveness as standard offer programs and market transformation programs.

An electric utility could use energy audit programs to achieve these goals if the programs did not constitute more than 3 percent of the total program costs and the addition of the energy audit program did not cause a utility's program portfolio to no longer be cost-effective.

Rural carve-out. If an electric utility operating in an area open to competition, on demonstration to the PUC, could not meet the energy efficiency requirements in a rural area through retail electric providers or competitive service providers, that utility instead could achieve the energy efficiency goals by providing rebates or incentive funds to the customers in the rural areas to promote or facilitate the program.

Standardized forms and terms. To help residential or nongovernmental nonprofit customers make informed decisions on energy efficiency, the PUC could consider program designs that ensured that the customer was provided with standardized forms and terms that allowed the customer to compare offers.

Energy efficiency plans and reports. An electric utility would be required to submit electronically an energy efficiency plan and report on or before April 1 of each year.

The plan and report would have to provide information on the utility's performance in achieving energy efficiency goals for the previous five years, how the utility intended to achieve future goals, and any other relevant information.

The PUC would be required to adopt a form, by rule, that would allow the public to easily compare information submitted by different electric utilities.

The PUC would be required to publish information on energy efficiency programs, including an explanation of the state's energy efficiency goal, a description of the types of programs available, a link to the energy efficiency plans and reports, and a list of installers of energy efficiency measures or services.

Repealers. CSHB 1629 would repeal the requirement for the PUC to establish an incentive to reward utilities administering programs that exceeded the minimum goals.

Effective date. The bill would take effect September 1, 2011.

SUPPORTERS SAY:

Energy efficiency lowers utility bills for consumers by avoiding higher costs of electric generation. Consumers save between $2 and $3 for every dollar spent on energy efficiency programs. The American Council for an Energy Efficient Economy (ACEEE) estimates that Texas, under its current efficiency program, will drive a net savings to customers of $3 billion over the period 2012 to 2030. A recent ACEEE report suggests that Texas could increase those savings to $14 billion over the same time period with increased efficiency goals.

A recent PUC report, known as the Itron report, stated that increased energy efficiency goals would generate between $4.2 billion and $11.9 billion in net benefits to citizens of Texas. This past summer, the PUC undertook rulemaking to raise the goals from 20 percent of growth in demand to 30 percent. Energy efficiency also positively impacts the environment and eases stress on the electric grid.

CSHB 1629 would take a step toward achieving those increased savings by changing the metric of the energy efficiency goals from a percent of new demand to percent of peak demand. The new metric would provide for a more predictable goal, instead of one that was vulnerable to variables such as downturns in the economy, which impact the growth of new demand.

OPPONENTS SAY:

Since 2002, Texas consumers have paid $591.1 million to support the state's energy efficiency program. The 2009 costs totaled $104.8 million, and the program's estimated cost for 2010 is $114.8 million. The revisions to the state's energy efficiency goals that would be made by CSHB 1629 could increase these costs.

It is unclear if Texans are getting their money's worth from energy efficiency programs because the full costs of the programs are not accurately measured and the benefits are overvalued. Given the existing data and methodology, it is possible that the returns of the program are negative. Government mandated energy efficiency programs are designed to decrease energy use. They generally do this by increasing the cost of energy, which results in a decrease in energy use and subsequently in economic growth. The state should evaluate the energy efficiency program to encompass all the costs involved with energy efficiency, including those to the program, consumers, and the Texas economy. The state's energy efficiency program should be closely examined to ensure that it actually would reduce the cost of energy use.

NOTES:

A similar bill, SB 1125 by Carona, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 21 and has been referred to the House Energy Resources Committee.

SUBJECT: Transferring audits of the court fee collection program to the OCA

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Gallego, Hartnett, Aliseda, Carter, Zedler

0 nays

4 absent — Burkett, Christian, Y. Davis, Rodriguez

WITNESSES: For — (*Registered, but did not testify:* John Dahill, Texas Conference of Urban Counties; T.J. Patterson, City of Fort Worth; Celeste Villarreal, Texas Municipal Courts Association; Monty Wynn, Texas Municipal League)

Against — None

On — Carl Reynolds, Office of Court Administration

BACKGROUND: Code of Criminal Procedure, Art. 103.0033 establishes a mandatory program to improve the collection of court costs, fees, and fines imposed in criminal cases for counties with a population greater than 50,000 and municipalities with a population greater than 100,000. Local governments may be granted a waiver from participating in the program if participating would not be cost effective. The comptroller is charged with periodically auditing local governments to ensure compliance with provisions of the cost improvement program.

A municipality or county may retain 10 percent of the money collected from criminal and civil fees as a service fee for the collection if it remits the remainder of the fees to the comptroller within a specific timeframe. If an audit determines that a local government did not comply with provisions of the cost improvement program, it cannot retain a service fee of 10 percent of fines for criminal and civil infractions or penalties for late payments of criminal fines.

DIGEST: HB 2949 would amend the Code of Criminal Procedure to remove responsibility from the comptroller for auditing cities and counties that

participate in the collection improvement program. The bill would assign the duties to the Office of Court Administration (OCA).

The bill also would repeal current law prohibiting a local government from retaining a 10 percent service fee for criminal and civil infractions or penalties for late payments of criminal fines if they did not comply with the cost improvement program.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

HB 2949 would make sensible changes to court fee collection practices and in so doing, generate additional funds for the state of Texas.

The bill would reassign the responsibility for auditing local governments required to participate in the collection improvement program from the comptroller to the OCA. This would allow auditors in the Comptroller's Office to focus on other concerns, such as auditing payments of mixed beverage and sales taxes. Audit responsibilities for the collection improvement program, which was established in 2005 to improve local collection of court fees and fines by creating standard collection and enforcement procedures and practices, rightfully should be located with the OCA.

The OCA could hire auditors specifically for the purposes of reviewing compliance with the collection program. Since the program concerns specific court fees and fines, the OCA is better positioned to manage audits of participation in the collection program than is the comptroller, who generally focuses on direct tax payments. The bill would maximize economy of location by housing auditing of program compliance with the agency charged with administering the program.

Making the collection program voluntary for some local entities, such as counties, could have a significant fiscal impact. One estimate indicates that the collection program has increased local revenue by an average of $60 million yearly. If the program were made voluntary for counties, the state could lose a significant portion of the increased collections.

OPPONENTS SAY:

HB 2949 would miss an opportunity to make a meaningful change to the cost collection program, which unfairly requires medium and large cities and counties to adopt specific collection processes and procedures without providing them with the license to tailor their own programs. A bill under

consideration in the Senate, SB 1059 by Nichols, would allow counties to implement their own collection programs that would not be subject to audit. The bill would preserve the collection program requirement for cities, which are better equipped to implement and administer the program than counties.

If participation in the collection program was voluntary for counties, the OCA could administer the auditing function with fewer resources. Under this scenario, the OCA could trim the auditors needed from eight to two, saving funds in employee benefits while still ensuring compliance among municipalities. Counties that had already implemented a successful collection program could maintain those programs, modifying them to suit their specific needs.

The committee-approved version of the bill would remove penalties for local governments whose collection programs did not stand up to an audit. This would have a significant negative fiscal impact by reducing participation rates in the program — a 50 percent decline in participation could revenue collection by $20 million a year.

NOTES:

The author plans to offer a floor amendment that would delete provisions in sections two and three of the bill that repeal penalties on local governments for failing an audit.

The Legislative Budget Board (LBB) estimates the bill would have a positive fiscal impact of $4.4 million through fiscal 2013. The fiscal note cites a comptroller estimate that moving the audits to the OCA would save $4.4 million in fiscal 2012 and $4.5 million in fiscal 2013.

According to the fiscal note, this gain would be partially offset by $1.7 million in fiscal 2012 and each year following from reduced compliance with the collection improvement program. The gain also would be offset by repealing penalties to local governments for noncompliance, but the comptroller was not able to estimate the resulting loss.

HB 3790 by Pitts, which includes similar provisions transferring the auditing duties from the comptroller to the OCA, is on today’s Major State Calendar.

SUBJECT: Energy efficiency loan pilot program for churches and nonprofits

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 8 ayes — Keffer, Crownover, Carter, J. Davis, C. Howard, Lozano, Sheffield, Strama

1 nay — Craddick

WITNESSES: For — Joshua Houston, Texas Impact; (*Registered, but did not testify:* Ramon Alvarez, Environmental Defense Fund; Maria Huemmer, Texas Catholic Conference, Roman Catholic Bishops of Texas; Cyrus Reed, Lone Star Chapter, Sierra Club; David Weinberg, Texas League of Conservation Voters)

Against — None

BACKGROUND: Government Code, sec. 2305.032 establishes the LoanSTAR Revolving Loan Program, which is administered by the State Energy Conservation Office (SECO) in the Office of the Comptroller. Under the program, SECO may provide loans to finance energy and water efficiency measures for public facilities. SECO must set the interest rate for a loan at a low enough rate to recover administration costs, and a borrower must repay the principal of and interest on the loan with the savings accrued from implementing the conservation measure. The funds that are repaid by borrowers are then loaned out again. SECO must ensure that at least $95 million is available to the program at all times. The program's funding source is petroleum violation escrow funds from the federal government.

Utilities Code, sec. 39.904(d) defines "renewable energy technology" as any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived from natural movements and mechanisms of the environment.

Government Code, sec. 535.001(2) defines "community-based organization" (CBO) as a nonprofit corporation or association located in close proximity to the population that it serves.

DIGEST:

HB 2077 would direct SECO to establish and administer a pilot program under the LoneSTAR program to provide loans to houses of worship and CBOs. These loans would be used to finance the implementation of energy efficiency measures and renewable energy technology in buildings that the organizations owned or operated.

The bill would define an "energy efficiency" measure as one aimed at reducing the energy consumption rate of equipment or processes, as achieved through any of various specified means, and a "house of worship" as a demonstrably religious nonprofit corporation or association. "Community-based organization" and "renewable energy technology" would be defined as they are in the Government Code and Utilities Code, respectively.

The bill would require SECO to submit a report to the Legislature by January 1 of each year that would describe the implementation and status of the pilot program, the measures or technologies financed under it, the energy saved and clean energy produced because of it, recommendations for addressing any challenges or obstacles encountered, and any other information SECO found necessary.

The bill would require SECO to establish the pilot program by March 1, 2012, and the provisions added to statute would expire December 31, 2015. The bill would take immediate effect if it received a two-thirds vote of the elected membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

Churches and CBOs are important state partners that serve critical public functions, such as providing social services and aiding in disaster relief efforts. As the economic recession has taken its toll, Texas families have increasingly relied on these organizations as safety nets. However, the recession has also caused a decline in the charitable contributions that support these organizations and allow them to provide the services that communities need. Making matters worse, if social services in the state budget are cut as deeply as anticipated in the upcoming biennium, the demands upon churches and CBOs will only grow.

Under these circumstances, CBOs and churches need to save money in any way they can. Utility bills are one of the biggest expenses for these organizations, which frequently operate out of old and energy-inefficient buildings. For example, a church congregation with an average Sunday

service attendance of 400 to 800 members can face an annual utility bill of $70,000 to $120,000. Implementing energy efficiency measures or incorporating renewable energy technology in these buildings would lower their utility bills, freeing up money to be spent on additional benefits for their communities. Unfortunately, these organizations often lack the upfront capital that is needed to take on such investments.

The exceptionally successful LoneSTAR program would be an ideal resource for churches and CBOs wanting to make such investments. The program already provides low-interest loans to fund energy efficiency projects, but only public entities currently are eligible. HB 2077 would create a pilot program in which CBOs and churches would be eligible for LoneSTAR loans to invest in energy efficiency and renewable energy technology improvements.

The bill would have no cost to the state. The LoneSTAR program is financially self-supporting, with its administration entirely funded by the interest paid by borrowers, and the fund itself is composed of federal money. The pilot would use only existing funds in the LoneSTAR program. SECO reports that the LoneSTAR program currently has unloaned funds and would be capable of supporting the proposed pilot program.

OPPONENTS SAY:

The funds available in the LoneSTAR program are limited, and there would not be enough to finance additional loans for CBOs and churches, as HB 2077 would authorize. The LoneSTAR loan funds should be reserved for public entities, as they are now.

SUBJECT: Pre-empting liquefied petroleum gas ordinances of local governments

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 9 ayes — Keffer, Crownover, Carter, Craddick, J. Davis, C. Howard, Lozano, Sheffield, Strama

0 nays

WITNESSES: For — William Van Hoy, Texas Propane Gas Association; (*Registered, but did not testify:* Tony Dale, Ferrellgas)

Against — (*Registered, but did not testify:* David Power, Public Citizen Inc.)

BACKGROUND: The liquefied petroleum gas industry is regulated by the Railroad Commission (RRC) and by local governments throughout the state. Natural Resources Code, sec. 113.051 directs the RRC to promulgate and adopt rules or standards relating to any and all aspects of the liquefied petroleum gas industry that will protect the health, welfare, and safety of the general public.

DIGEST: HB 2663 would add a provision to the Natural Resources Code that the health, welfare, and safety rules and standards adopted by the RRC under sec. 113.051 pre-empt and supersede any ordinance, order, or rule adopted by a political subdivision of Texas relating to any aspect or phase of the liquefied petroleum gas industry.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY: Local regulations for the propane industry often are inconsistent or conflict with the rules adopted by the RRC. The RRC adopts nationally recognized standards for the industry developed by the National Fire Protection Association and adjusts them if necessary. HB 2663 would ensure consistent, uniform statewide regulation of the propane industry.

Some local governments have allowed property owners to use propane to heat a pool or a spa but not a home. There is no science to support the

distinction. HB 2663 would allow science-based standards to prevail over fear, emotion, and local political pressures. A local government still would be able to approach the RRC for an exemption.

OPPONENTS SAY:

Municipalities need the continued ability to regulate propane gas based on location and topography in order to ensure public health, safety, and welfare. Texas is a large state with widely varying physical characteristics in each region. Local regulations often will be more appropriate than a one-size-fits-all approach.

SUBJECT: Removing employer information from the public sex offender database

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Gallego, Aliseda, Burkett, Christian, Y. Davis, Rodriguez, Zedler

1 nay — Carter

1 absent — Hartnett

WITNESSES: For — Herman Buhrig; Jon Cordeiro, New Name Ministries; Clare Fleming, Ventana del Soul; Mary Sue Molnar, Philip Taylor, Texas Voices; Frank Ringer, Travis County Reentry Roundtable (*Registered, but did not testify:* Chris Cunico, Texas Criminal Justice Coalition; David Gonzalez, Texas Criminal Defense Lawyers Association; Jennifer Pinkley, Travis County Reentry Roundtable; Kandice Sanaie, Texas Association of Business; Bobby Smith, June Smith, David Clyde Mitchamore; and 44 others)

Against — None

On — Louis Beaty, Texas Department of Public Safety; Allison Taylor, Council on Sex Offender Treatment

BACKGROUND: Code of Criminal Procedure, art. 62.005 requires the Department of Public Safety (DPS) to maintain a computerized central database containing the information required from registered sex offenders and to make information about those registered available to the public through the agency's website.

Information in the database is public information, with the exception of information regarding the person's online identifier, social security number or driver's license number, or any home, work, or cell phone number.

DPS did not keep employer information on the public sex offender database until 2007 when an attorney general's opinion determined that the employer information was public information.

DIGEST:

HB 3346 would exclude a sex offender's employer's name, address, and telephone number from the DPS public information database.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

HB 3346 would be a positive step forward in helping former offenders connect with their communities by removing barriers to getting and keeping jobs, a key factor cited by the Legislative Budget Board's 2011 Government Effectiveness and Efficiency Report in preventing recidivism. Employers are less likely to hire people if they know their business information will be associated with sex offenders, and employers have fired employees when they found out the names and addresses of their businesses were listed on the database.

By removing an obstacle to successful reentry of sex offenders into society, HB 3346 would result in a lower incidence of recidivism and increased safety for the public. Texas is one of only four states that include employer names and addresses on its sex offender public database. Currently, 33 states do not list employer information on their databases.

No good public policy reasons exist for keeping employer names and addresses on the public database. Law enforcement still would be able to access a sex offender's employer information through the DPS secure sex offender database, and employers still could gain access to sex offender information through criminal background checks. A coworker still could look up a person by name on the sex offender database to see if the person was a threat. The database cannot be searched by employer anyway, so removing employer information would not take away any useful current search feature.

HB 3346 would put a stop to news organizations exploiting sex offender employer information in a sensational way that has resulted in harassment and termination of sex offender employees. Moreover, employers trying to give offenders a second chance should not be made targets for harassment themselves, as has happened in the past.

OPPONENTS SAY:

The goal of the public sex offender database is to give all Texans a broad-based tool to protect themselves from dangerous predators. HB 3346 would scale back access to potentially important information. For

example, members of the public could use the employer information to make sure the sex offenders were where they say they were during work hours.

SUBJECT: Lowering the tax rate on chewing tobacco

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Otto, Elkins, Gonzalez, Martinez Fischer, Murphy, Ritter, Woolley

0 nays

3 absent — Christian, Lyne, Villarreal

WITNESSES: (*On original version*:)
For — Billy Hamilton, Swedish Match BH; Ron Tully, National Tobacco Company; (*Registered, but did not testify:* Troy Alexander, Texas Medical Association; Carey Dabney, Texas PTA; Mindy Ellmer, Swedish Match North America; Walter Fisher, Swisher International; Stephanie Gibson, Texas Retailers Association; Ron Hinkle, National Tobacco)

Against — (*Registered, but did not testify:* Ross Haynes, Robert Rowland, Tantus Tobacco; Jay Maguire, Tantus Tobacco, Cheyenne International, Sandia Manufacturing)

On — Dean Ferguson, Texas Comptroller's Office

BACKGROUND: Tax Code, sec. 155.0211, taxes chewing tobacco at:

- $1.13 per ounce in 2011;
- $1.16 per ounce in 2012;
- $1.19 per ounce in 2013; and
- $1.22 per ounce in 2014 and beyond.

Tax Code, sec. 155.001, defines "chewing tobacco" as Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing.

DIGEST: CSHB 2599 would remove chewing tobacco from the graduated tobacco tax ladder and would tax it at 80 cents per ounce.

The bill would define "chewing tobacco" as any leaf tobacco that was not snuff and that was either suitable for chewing, including Twist, plug, and scrap, or not intended to be smoked.

The bill would take effect on September 1, 2011, and would not affect any tax liability that accrued before that date.

SUPPORTERS SAY:

CSHB 2599 would help create tax equity in the tobacco market. In 2009, the 81st Legislature enacted HB 2154 by Edwards, which changed the way noncigarette and noncigar tobacco was taxed to a weight-based system. A typical package of chewing tobacco weighs about three times more than a can of snuff. Switching to a weight-based system meant that comparable tobacco products were taxed disproportionately. This has led to a collapse in chewing tobacco sales in Texas.

The bill would encourage Texans to buy their chewing tobacco in-state. Usage rates have not substantially decreased since the tobacco tax was changed. The new tax system drove Texans to either purchase their chewing tobacco out-of-state or illegally online. Lowering the rate would help stop out-of-state sales, on which the state collects no taxes.

Taxing chewing tobacco at 80 cents an ounce would create a true Laffer curve. The rate reduction would expand the market by increasing sales. The 80-cent rate resulted from negotiations between the tobacco industry and state tax administrators. According to the fiscal note, the increase in sales would make up for any tax revenue lost by lowering the tax rate.

Lowering the tobacco tax rate resulted in an increase in tax revenue for the state of Washington in 2005. Four years earlier, the state had increased the tax on cigarettes from roughly 75 percent to roughly 130 percent of the price of a package. The increase pushed cigarette sales to neighboring states, Canada, and Indian reservations. Lowering the tax back to 75 percent allowed Washington to recover 95 percent of the lost market.

OPPONENTS SAY:

The bill is shortsighted. By lowering the tax rate on chewing tobacco, CSHB 2599 would increase its consumption. All forms of tobacco cause cancer. Increased usage would increase the incidence of cancer, which ultimately would raise health care costs for the state and people of Texas.

OTHER OPPONENTS SAY:

If lowering the tax rate would have a true Laffer effect, then the tax rate on chewing tobacco should be reduced further to maximize tobacco tax income.

It would be more equitable to tax tobacco on a proportional usage system rather than a weight-based one. For instance, a one-ounce can of snuff will usually last a consumer a day or a day and a half. A three-ounce pouch of chewing tobacco will last just as long. A proportional usage system would cause less inference in the tobacco market and would prevent the need for legislative tweaks and calibrations that the weight-based system requires.